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Is the Legalistic Mind Qualified for Rate Making?

A provocative query and a searching reply—by a man who was once a lawyer and who became an authority on economic and public relations problems—

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IT is not the lawyers that cause the trouble. It is the legalistic mind.

The lawyers have no monopoly of the legalistic mind. It is quite common among engineers, accountants, and financiers. Any man who insists upon applying the letter of the rules, regardless of the situation or the consequences, has a legalistic mind. He can hold with complete mental honesty that the operation is successful even if the patient dies—death being a purely personal affair of the patient.

The legalistic mind is relentless in its pursuit of technically exact justice. It cannot see, for instance, that the Constitution of the United States does not hold within itself the full answer to any question which may concern the public utilities.

THE law, it is said by those who chronically view with alarm, is falling into disrespect. What hope can there be for a nation which does not both respect and obey its laws? To respect the law is instinct in the Anglo-Saxon mind and this country is still, at least in its mode of thought, Anglo-Saxon. But it is also instinct in the Anglo-Saxon mind to rebel

against such laws as do not make for equal justice. The common law of England has always been a very flexible thing and it has been respected not because it was law but because most of the time it represented what was by common consent the public concept of sense and justice.

The American people began with a profound respect for the law and the lawyers and took it as quite right that there should be technicalities in the law. They liked to think of the legal profession as exalted and mysterious. It was entirely right that the whole book of the law should not be open to the casual reader. The public prefers to regard its learned men as more than mortals—to see in them a touch of the medicine man. The older lawyer, with his top hat and utterly dignified mien, was only playing up to the public's faith in medicine men. The general public has never accepted the lawyer who is not an orator, and it took finance and business a long while to discover that having a first-class orator as a lawyer was often very dangerous.

We are still, as a nation, lawyer-minded but our people have come to view the law not as an expression of an exact justice which knows no favorites but as the rules of a game which lawyers play. Of course, no one ever goes into court wanting justice. The abstract conceptions of justice are worthy, but one goes into court only to get what one wants, and so justice is defined variously and has to do with where one is sitting at the moment. Our gangsters, for instance, have a clear grasp of the realities and so, instead of putting up a pretense of justice and following the accepted forms of rigmarole, they go directly to the point and, in so far as they may, buy up the machinery of justice so that they can direct its workings. And it is because of the very general belief that the machinery of justice can be bought that law and lawyers are generally held in disrepute.

On most questions the public is fundamentally right. It may easily be that the laws, the legislators who make them, the lawyers who either as advocates or as judges interpret them, and the officers who enforce them are all held in disrespect because so large a section of their activities is not entitled to any respect. The trouble is that the public is perhaps a little bit too undiscriminating and tosses the good in along with the bad.

An officer of one of our largest public service corporations complained rather bitterly that if he wanted to make a change in his stationery he thought the matter would have to be submitted to the company's legal department in order that the state of the law with respect to the letterheads of second vice presidents might be reviewed. He remarked:

> "These gangsters today are not at all original. They have simply adopted the organization which some of the freebooters used half a century ago. Some of the New York speculators had legal departments whose sole business was to advise them how to get around the existing laws or, in the event that the existing laws were awkward, to go out and get new ones and, if necessary, to see that the right judges were picked. Political rings have done that since time immemorial and the only thing that I see new

today are the bombs and the machine guns.

"Some of the early franchise hunters would have used machine guns had machine guns been then invented. They did what they could according to their lights, and the gangsters of today are neither cruder nor more direct than were they. If racketeering ever gets respectable, it will find itself hampered at every turn by the very laws which once gave it the license to buccaneer. This sounds like a crazy exaggeration but you know that most racketeering arises out of a more or less honest attempt to prevent unfair competition. Well-meaning men will combine into an association to prevent bad work and price cutting and they will make contracts with labor unions that are really public-spirited. All their arrangements, however, are in violation of the Sherman or the Clayton Acts and they are led into enforcing their agreements through extra legal means. Before they know it, they are in the hands of racketeers who are smart enough to see the truly wonderful opportunities for blackmail. Now, if these trade agreements should be legalized and trade regulation put where, say, utility rate regulations are today, the old atmosphere would not clear all at once and every business man would feel that, if he did not watch his step, he would fall afoul of some part of the law he had never heard of.

"We in the utility business live in the tradition, so to speak, of criminality—that naturally we do wrong—and so we are overrun with lawyers to guide or to check our instinctive criminality."

IN the old individualistic days, business did not much come into contact with the law. A man went to his lawyer to have his will drawn, to take title to a piece of property, to draw a partnership agreement, or to defend or to prosecute a suit. Lawyers were not often called on for advice—their chief business was in conveyancing and in settling estates. They were nearer to the present-day trust company than to the present-day lawyer. A successful lawyer had to have an imposing front. It was the corporation that brought the lawyer into business. All of the earlier corporations had to be created by special legislative acts, and drawing the charters, as well as getting the acts through the legislatures, was entirely without the province of the layman, and this probably also accounts for the intimate connection between the lawyers and the politicians. For always the lawyer in a community was its natural representative in a legislative body—only the lawyers and the clergymen were accustomed to public speaking. The clergyman receiving a stipend from his congregation could not in addition take on political duties, while a lawyer, on the contrary, found the fees of politics to be most excellent grist for his mill. A corporation is an artificial being with only such legal powers as have been given to it. The old individualist, accustomed to running

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things as he pleased, found that he could not run a corporation as he pleased without a lawyer at hand to keep him out of trouble—or rather to let him do the things that he wanted to do without getting into trouble.

THIS is not to say that the leading spirits of the corporations have always wanted to do something against the public interest. But many of the older charters were so drawn that business really could not be done under them—it is to be remembered that they were drawn by men without business or corporate experience. As the corporate form grew to be the most convenient way of assembling money and doing business, there also grew up a race of lawyers who could advise positively instead of negatively—men who could show the officers how they might do things as corporations which would have been quite all right to do as individuals. And a few wanted to do things as corporations which would have landed them in jail as individuals.

WHEN first the railroads and later the utilities came into the service of the public, the corporate form was not new, but these companies brought up a great number of questions that were new, for the railroads, electric light, and similar companies were wholly new and dealt in new services. Each movement for the extension or restriction of corporate powers has of necessity been legal. This was not from choice. Engineers used to be given very narrow educations which never took them much if any beyond their engineering. The financiers looked only to gaining higher profits which would give them a chance to float more securities.

And so, by default, every question that had not to do with engineering or finance dropped into the lap of the lawyer. He was the only really versatile man around.

The lawyers have, on the whole, done a good job. But they have brought into the legal field a vast number of questions which are not in the least capable of being decided by law. They have been so keen to resist any encroachment on corporate powers that nearly everything connected with the founding and management of public service corporations has been made narrowly legal. Here again the lawyers have not been to blame. The whole matter of rate regulation belongs in the field of engineering and economics. There has never been a rate which a business man familiar with utilities could not fairly fix—a manufacturer has no need to appeal to the courts to help him price his goods. It was the charging of unfair rates by stupid men or the charging of fair rates in such a stupid way as to make them seem unfair that brought up public regulation.

THERE is no difference in the mind of this writer between a utility rate and the price of an automobile. If the price be too high, the market will be restricted and the profits of large production will be lost. But it took a long while to convince business men that a sound business was one with a broad base and that a broad base could be had only by securing great numbers of customers on a small margin of profit.

The utilities are not to be blamed

The Question of Rates Is So Snarled in Judicial Decisions that Only Legal Minds Can Understand It

"IT is not surprising that the lawyers should have found a way to appeal . . . to courts of law and actually argue rates from the purely legal standpoint. No court is by training or otherwise equipped to decide the confiscatory nature of a rate, and consequently we today have the whole subject of rates in a most hopeless mess of judicial decisions in which the actual facts at issue are distorted so that they can come within the range of the legal mind in its official capacity."

for not seeing this. The managers had large capital charges to meet and they had no choice but to obey the financial men who had the ultimate control. For a man must keep his job. Business generally never saw the advantages of volume production with small profits until Henry Ford began to amass an astonishing fortune. And in a case involving the Ford Company a court held as a matter of law that a reduction in the price of his motor car was bound to result in smaller total profits.

The court, although not in so many words, accepted the argument that it was absurd to reason that reducing prices would so increase production as actually to make the net profits larger. In effect it was decided that Ford's theory of reducing prices and increasing sales was evidence in itself that he was not competent to manage his business. It is not surprising that the legislators, when they began to cast their eyes on rates, thought only in legal forms, for they were themselves mostly lawyers. They set up regulatory bodies which were really new kinds of courts which had to decide rates largely by legal processes. And it is no more surprising that the lawyers should have found a way to appeal from these bodies to courts of law or of equity and actually argue rates from the purely legal standpoint. No court is by training or otherwise equipped to decide the confiscatory nature of a rate, and consequently we today have the whole subject of rates in a most hopeless mess of judicial decisions in which the actual facts at issue are distorted so that they can come within the range of the legal mind in its official capacity.

PUBLIC opinion is formed by rates more than by anything else, for rates touch the pocketbook.

It is wholly natural for people to want to shop cheaply. They have been taught to believe that if the utilities were not regulated the rates would be sky high, and seldom do they believe that the rates being charged are fair—once the possibility of low-

er rates is called to their attention.

This attitude can be charged directly to the lawyers for the utilities.

Through years every attempt at rate lowering has been met with a battalion of lawyers always offering the same arguments—that the lower rates will drive their companies into bankruptcy. The public reads of improvements in the generation and transmission of power. The present custom of industry is to pass on improvements to the public—because cheaper goods mean more volume. A few of the enlightened utilities do exactly this but it is not unusual for them to take the European attitude towards machinery:

"We expend the capital for this machinery in order to increase our profits. Why should our workmen or customers ask for any benefits?"

IF a movement for a lower rate be on, invariably the utility lawyers passionately show that the bankruptcy of their company is inevitable if the rates be lowered. The rate is lowered and the company goes on—usually making more money than before. The inescapable conclusion of the public is that the company's representatives lied. Seldom has the company lied. It has more often sincerely believed with the Ford judge that lowering prices meant lowering profits. Of course, lowering rates does not always increase business—there is a point of diminishing returns. But that point is seldom where it is supposed to be.

THE public is fair-minded. It will seldom follow the agitators—whether these agitators be soapboxers or newspaper editors. But if it thinks that it has been tricked, it cares not at all what happens to the one who tricked them. The actual facts are never very important. People do not in general accept the facts which are presented to them and for a good reason—they have learned that in every case there are two sets of well established facts which cannot possibly be reconciled. Public ownership is a case in point. The social reformers bristle with facts—although the emotional equipment of a social reformer is such that under no circumstances can he appraise a fact. One of the oddest characteristics of the socialistic mind —which is exceedingly legalistic—is that it affects (and really believes) that it never acts without the facts. But by a sincerely trained discrimination, the socialist mind rejects any evidence which does not stand the test of its principles.

A VAST amount of attention is today being given to the collating of the facts about utilities—both for and against them. This labor is necessary and important. It is useful when presented as evidence in court but the public cares nothing at all for the elaborate and conclusive statements issued by each side in any utility row. The public is, indeed, a deal like a jury. There is a lot to the notion of presenting a case "before the bar of public opinion"—as the ponderous phrase goes. But the reactions are not quite what the public advocates imagine. A jury when it retires, after hearing a mass of conflicting evidence, as a rule, decides on its emotions. Each juror will have picked out some scrap of evidence or fragment from the judge's charge and on that in his own mind he settles the case. In the end we get

substantial justice. No one knows what exact justice is.

WHEN a public utility appears before the public, it does not seem to make a deal of difference what evidence it has in hand or how it presents it. The public will be for or against the corporation, not on the state of facts as revealed, but on the reputation of the corporation for honesty and fair dealing. That reputation is built out of a collection of intangibles and generally a corporation which has actually played fair will have public support.

There is a difference between actually playing fair and being technically fair. This is the point which escapes the lawyers.

It is the business of a lawyer to guard the interests of his client at every turn. In the mind of a thoroughly trained lawyer, a small encroachment on the rights of a corporation here may open the way for a larger encroachment there. And any man with a high sense of his legal duty will be justified in resisting even the smallest violation of rights lest a precedent be established. Thus it is that the utilities are constantly before the public in the attitude of a prize fighter with his guard up poised to resist any blow and to land one if the opening comes. Never, apparently, will a corporation agree to anything without a legal row. I say "apparently" because corporations in these days do agree to many compromises and have now and again led in reforms. But one bonehead play will make the public forget all about the good plays. And most bonehead plays come about through insisting upon legal rights.

TAKE the celebrated Standard Oil case. John D. Rockefeller was and is a man of the highest ideals and is our foremost business man. He did in oil what Henry Ford did later in automobiles. Mr. Rockefeller was far too able to descend to petty practices; no man of real ability ever grabs the near dollar. He standardized a product which was notoriously crooked—the whole industry was in such a loose condition when he entered it that a barrel of oil might mean anything. The refiners did not often know or care what they sold. It was up to the buyer to see what he bought. He provided his own tank cars in full train load lots. Then he made his rate bargains on the basis of how much less it cost the railroads to carry his stuff than to furnish cars and pick up lots from the others. The railroads made more money on his traffic at lower rates than they did on a competitor's traffic at higher rates. But, instead of this common sense arrange-

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ment being presented for what it was, the cry of his competitors that he received "rebates" took hold in the public mind.

The oil agitation did not begin with the public—it started from the attempts of Rockefeller's competitors to disable him and prevent his superior ability from being effective. Mr. Rockefeller was by nature secretive—all the big men of his time were. He always hired the best men he could find and so he retained the most eminent counsel. Their unanimous advice to him was under no circumstances to say anything at all. They could see only the eventual fight in the courts, and it is a great help to have a client speak his piece for the first time on the witness stand.

And thus the various charges against Standard Oil went unanswered on "the advice of counsel."

THE late Richard V. Lindabury possessed in a high degree the ability to keep his clients believing in him. He had a fine legal mind and a respect for the law. He thought that the Constitution of the United States stood between his clients and a grabbing public. He never realized that the Constitution was only a repository of public opinion and, if its terms did not suit the public, that not the people but the Constitution would have to change—either by amendment or by interpretation. And so he always advised his clients to remain silent, whatever might be the charges, until they had their day in court.

It is not unlikely that a great deal of the anticorporate agitation—and it is again in full force—can be traced to Mr. Lindabury's attitude. For thousands of other lawyers followed him exactly.

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IT HAS been discovered that the best of engineers do not perform well unless they have a sound business man supervising their work and their decisions. The best corporate set-up seems to comprehend a staff of fine engineers working under a man without technical training but with a mind capable of grasping both the engineering and the public points of view. The same set-up on the legal end works just as well.

But while engineers can be kept in line, it is difficult in the extreme to keep the lawyers in line—for unless the legal advice be exactly accepted the corporate head may find himself in heaps of trouble. A man must be very sure of himself, indeed, to disregard legal advice as being contrary to common sense.

And that is why so many of the utilities are lawyer-ridden.

And that also is why so many cases that involve public opinion are settled in defiance of public opinion and according to the law.

And, to repeat, winning a case in defiance of public opinion is worse for the corporation in the end than losing.

Recent Trends in Gas Regulation

What the state commissions and the courts are telling the utility corporations they may and may not do in the conduct of their business.

By ELLSWORTH NICHOLS

Introduction of natural gas into communities formerly served by artificial gas and the improvement of rate structures have probably been the most obvious and important regulatory matters dealt with by the commissions during the past year. They have also been subjects for study by the gas utilities.

Whether to bring in natural gas to be substituted for artificial gas, either wholly or by mixture, has been a problem. Demands are made by customers and public offcials for natural gas. They have heard that it is much cheaper than artificial gas. Utility officials, however, know that it is expensive to lay pipes and transport gas long distances, and they want to be assured that the source of supply will be dependable.

While demands are made for the natural product in many communities, in some places there is opposition. Competition with local fuels is a factor. This has been noticed in Illinois and Utah.

In the latter state the commission has ruled on the question. Although it was feasible to produce a solid smokeless fuel for domestic and commercial use from the enormous bituminous coal resources of the state, authority was given to a natural gas utility to serve eight cities, where there appeared to be no positive assurance that any plant for the conversion of such coal would be constructed in the near future.[1]

Of course, the question also arises whether a new company should be permitted to distribute natural gas where an artificial gas plant is in operation.

Whether a new utility should be permitted to serve may depend upon the question whether the existing utility is furnishing adequate service. Thus it has been held in Kansas that while substantial numbers of prospective customers within the service area of a gas utility want gas and cannot get it, the utility is not meeting the public convenience, and the commission is justified in permitting operation by another gas utility which is

ready and willing to furnish utility service.[2]

In that case the court also held that the commission is relieved of its duty to protect from competition a gas utility which has, by reason of its interstate character and intercorporate relations, removed the supervision of rates and service from the control of the commission.

AN application by a natural gas pipe line carrier for authority to serve was denied by the Colorado commission where the evidence showed that the applicant did not have sufficient funds to finance its program or any definite plan for obtaining them. The commission also considered the fact that the natural gas project would be dependent upon the problematical commercial success of a process for manufacturing dry ice, a by-product of carbon dioxide. Approval, it was thought, might be relied upon by the public in purchasing securities to finance construction and possible experiments.[3]

But authority was granted by the Missouri commission to a corporation to exercise franchises for gas service notwithstanding the probability that the project would not yield an adequate return at reasonable rates. The company seemed willing to go ahead with the project on that basis using cash already on hand, and did not propose to finance construction out of funds to be obtained from the sale of securities to the public.[4]

AUTHORITY for furnishing natural gas service in Pennsylvania was granted, as between two rival applicants, to one which had been engaged in such service in surrounding territory for a number of years, and which had obtained the approval of local authorities. The commission said that it would give such consideration as is proper to the expressed preferences of municipal authorities.[5]

Two rival applications for authority to render gas service in a sparsely settled area, one by means of local air-butane gas process and the other by means of pipe line transmission from an established system under the Hudson river, were both denied, without prejudice to a further consideration after a more careful survey of relative costs, where present evidence seemed to indicate that either venture would be highly speculative.[6]

A GAS utility holding a certificate to construct and operate a pipe line was held to have commenced operations in good faith within the necessary time limit so as to avoid forfeiture of its certificate for nonuse, where before the expiration of the time limit it had secured 60 per cent of the necessary right of way, had constructed a small section of pipe, expected to have within a short period much equipment and labor available upon the completion of other similar projects, and promised to be in operation within a few months.[7]

There was considerable interest manifested in the decision by the Colorado commission (in *Re* Arkansas Valley Natural Gas Co. P.U.R.1930A, 454) that a certificate permitting the inauguration of a natural gas business should contain a condition that if, and when, the company could obtain enough gas of the same quality from any other source at materially lower rates than

provided for in a contract with an interstate supply company, it must do so and give consumers the benefit of the lower rate. The commission later held that it was not necessary to public interest that such a condition be imposed.

The commission pointed out that if, in the exercise of good faith and judgment, it was necessary to agree to take gas from the interstate carrier for a period of twenty years, and at rates offered, it was not fair within a year or so, if cheaper gas should become available, to penalize the distributing company by relieving the public entirely of the burden reasonably and necessarily entered into by the company for their benefit.[8]

AFTER the inauguration of natural gas service where artificial gas has formerly been sold, the lack of data concerning the cost of rendering natural gas service in the community makes it difficult to determine a proper rate schedule. It is said to be impossible to use past operating expenses in computing future net revenue of a utility changing from natural gas to artificial gas service. In such a case the New York Commission permitted a new rate schedule to go into effect temporarily, although several of its features were disapproved.[9]

THE commissions have passed on many gas rate schedules during the past year—most rate proceedings involving the usual questions of valuation, return, expenses, and variety of schedule, but two particularly important decisions on constitutional points have been made by the Federal courts. They involve fundamental theories of rate regulation.

The first involves the question whether a customer has a constitutional right to service at reasonable rates. It is well settled that a public utility company has a right to a fair return for its service. This is a corollary of the rule requiring the utility to serve, but frequently it has been asked whether a customer also has a constitutional right to service. A Federal circuit court of appeals has ruled that a customer does not have any such right, but is dependent entirely upon the public service commission law of the state. It was held that a prospective customer for a gas utility service was not subjected to confiscation to the extent of warranting the intervention of a Federal court by the failure of the utility to serve under a three-part rate including a service charge, with the alleged result that such customer would be required to pay more than his share for service; or by the refusal of the state commission to permit the utility to adopt such a rate.[10]

The other constitutional question relates to the right of a state or its commission to fix minimum as well

¶ "FREQUENTLY *it has been asked whether a customer has a constitutional right to service. A Federal circuit court of appeals has ruled that a customer does not have any such right, but is dependent entirely upon the public service commission law of the state.*"

as maximum rates. A Federal three-judge statutory court, by a divided vote of two to one, held that the Montana commission could not fix minimum rates for a gas utility which had established a low competitive rate. The supreme court of the state had held that the commission possessed this power.

The Federal court adopted the theory that whether regulation is reasonable always depends upon circumstances, that there may be good and valid reasons to justify fixing minimum rates, but that when the field is limited and reasonable rates will afford a fair return to but one in a community occupied by two companies, the law of self-preservation and survival of the fittest invokes the right of competition to the last extremity. It was said that any minimum rate order which would prevent the struggle and condemn the rivals to the ordeal of slow starvation is unreasonable and void. In such circumstances, the court declared, the state must prevent competition for patronage and not merely competition in rates.[11]

A UTILITY has the right to establish rates below the plane of just and reasonable rates for the purpose of promoting some policy of its own, provided, of course, that it does not imperil its ability to render adequate service, and even though it could not be compelled by the commission to make such reductions, it was decided in a case before the Montana commission. The commission said, in passing upon the reasonableness of a proposed natural gas rate, that it must be governed by the provisions of the statute creating it and subordinate to constitutional guaranties against confiscation of property, regardless of the fact that the utility had of its own accord previously adopted a rate insufficient to pay out-of-pocket expenses, and upon which numerous consumers were induced to take its service.[12]

THERE have been several instances recently where the utilities have been required to furnish data concerning their operations under penalty of having their contentions in rate proceedings rejected. The Louisiana commission in one case determined reasonable rates for a gas utility as best it could from its own knowledge of the gas industry as a whole in the state, where the utility refused to aid the commission with necessary information which it possessed. The commission said that it would take judicial notice of the decline of commodity and manufacturing costs entering into the production and distribution of manufactured gas.[13]

A motion of the utility, when it was ordered to show cause why its rates should not be adjusted, that it be given sufficient time to procure data upon which reasonable rates might be computed, was overruled, as the utility had seventeen days before the hearing to obtain such information, and furthermore, according to the commission, if it had kept its records as prescribed by law, it should have had some such information available.

WHERE a natural gas utility applies for an increase in rates and it appears that the utility contracted to pay a gateway price of 45 cents per thousand cubic feet, and it further

A Federal Court Makes a Ruling that Involves a Fundamental Theory of Regulation

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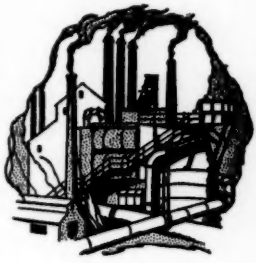

appears that the contract was made under the supervision of a managing company and that all the common stock of the distributing company, the supply company, and the managing company is owned or controlled by the same holding company, the burden is said to be upon the company asking for an increase in rates to show that the gateway price is just and reasonable to the distributing company and to the consumer.[14]

A gate rate paid by a distributing utility to a pipe line company for a wholesale supply of natural gas was, however, accepted without question as an operating expense, where there seemed to be no intercorporate relations between the companies.[15]

A GENERAL gas rate adjustment which, while resulting in a rate reduction generally, would increase rates in some cases, was approved in Arizona where the new rate structure was of the so-called "promotional" variety calculated to stimulate increased use of service by means of especially attractive rates for succeeding blocks of consumption.[16]

A rate revision in the form of reductions calculated to stimulate the consumption of gas through increased use for such purposes as house-heating service was approved, with minor modifications, for a company changing from manufactured gas to natural gas, where there was reason to anticipate that any loss would subsequently be offset by increased business. But the commission modified the proposed rates from an initial rate of $1.25 for 200 cubic feet for domestic consumers to $1.25 for 300 cubic feet, in order to favor small consumers and thus improve public relations.[17]

A proposed gas rate schedule which contained higher blocks of so much consumption as not to apply to any of the customers already attached to the business, or who would be likely to become attached in the near

future, was modified in New York by the elimination of such blocks.[18]

ESPECIALLY attractive rates for "space heating," offered by a gas utility only to commercial buildings and apartment houses, were held to work a discrimination against residential consumers who wished to use gas for heating. In order to remove this discrimination without unreasonably diminishing the utility's net earnings, the commission fixed a new rate for heating by gas, applicable to both classes, which was slightly higher than the former rate to the commercial class but lower than the former rate to the residential class.[19]

THE imposition by a gas utility of a monthly service charge in addition to a consumption charge was held in Massachusetts to be justified upon the theory that a certain amount of the utility's property in service is furnished for the exclusive use of each customer, and that in equity and justice to other customers the cost of maintaining such property and furnishing such service should be borne by the customer to whose use it is exclusively devoted. A sentence of a regulatory statute requiring that charges for gas service "shall apply to the consumption shown by meter readings made after the effective date of such rates, prices, and charges," was held not to prohibit a service charge in addition to a consumption charge, and such passage was construed to relate merely to the time when rates, prices, and charges should apply to be effective.[20]

In New York state, however, the commission has recently looked upon the service charge with disfavor. Chairman Maltbie stated that the fundamental objection to a service charge is not so much economic or accounting as it is psychological in view of customer opposition. He said that rate making is never a mathematical application of a theoretical principle and that it is impracticable to devise and apply a system of cost accounting and computation which would carry out literally the principle of having each customer pay the actual cost of serving him with gas.[21]

IN the Middle West particularly there has been a movement towards the substitution of the therm basis for the cubic foot basis of charging for gas. A gas utility in Illinois last year was permitted to change the form of its rate schedule so that instead of charging for the number of cubic feet of gas used, the rates should be calculated by therms. A therm is a unit of heating value equal to 100,000 B.T.U. The commission said:

> "The new rates are not to be obligatory upon any customer. It is proposed to place them in effect but leave in effect, also, the schedule stating the present rates, with the provision that if any customer at any time desires the company to revert to the present method of charging upon the cubic foot basis, he may have his bills rendered in that way at his written request.
>
> "At the hearing the representatives of the petitioner stated that there are plans now definitely under way whereby natural gas from Texas and other western fields will be brought to Chicago during 1931 and the reason given for the proposed change in the form of rates is that the company contemplates using the said natural gas in serving its customers in Chicago which, under its plan, would involve a change in the heating value. The company proposes a change in the basis of billing as outlined in this proceeding as a preliminary and a desirable step toward a modification of rates to be applied for gas service when and if these proposed changes in heating value are carried out."[22]

WHILE in some states opposition to merchandising activities by public utilities has actually reached the stage where laws prohibiting such business have been passed, in several other states the movement has been toward the segregation of the merchandising business rather than its prohibition. The attempt has been made to require separate accounting and to compel the exclusion of merchandising revenues and expenses from consideration in fixing public utility rates.[23]

Contract and jobbing work carried on by utilities has been included with the business of selling merchandise and appliances, for the purpose of segregating merchandising accounts from accounts for purely utility service.[24]

THE adoption of optional rate schedules has been quite extensive because of the opinion of utility managers that customers who wish to take advantage of lower rates where the customers' service conditions are acceptable should be permitted to receive service at a lower cost. It is incumbent upon the utility to give proper publicity to the optional form, although the responsibility of choosing the proper schedule has usually been placed upon the customer. The California commission has ruled, however, that the failure of a gas utility to comply with a rule requiring it to call its consumers' attention to various optional schedules and changes therein, or its refusal to accord the selected rate, may constitute a basis for reparation award.[25]

Controversies over optional rates in the past have usually related to placing customers on the best schedule, but a new note was sounded by the New York commission recently when it questioned the propriety of optional rates. Upon the complaint of a gas consumer that he had been billed without his knowledge at the more unfavorable of two optional rates for a considerable period, a company was ordered to submit a schedule eliminating such optional rates and applying the same rate to all consumers of a single class. It was said that if an optional rate form is used by a utility as a device for shifting responsibility placed by law upon it to the shoulders of its consumers, that would be sufficient reason for declaring optional rates unreasonable and improper.[26]

This decision seems to conflict with a recent opinion by the Pennsylvania commission in an electric rate case, where a contention that optional rates are illegal and discriminatory was overruled.[27]

AMONG the rulings on operating expenses we find a refusal to permit the amortization of the value

¶ "A UTILITY *has the right to establish rates below the plane of just and reasonable rates for the purpose of promoting some policy of its own, provided, of course, that it does not imperil its ability to render adequate service, and even though it cannot be compelled by the commission to make such reductions.*"

of duplicate equipment acquired from a former competitor which became unnecessary after consolidation;[28] a stipulation, upon authorizing abandonment of property, to the effect that if the utility should later urge the fixing of rates on present value, it would exclude from expenses the amount necessary to amortize such investment;[29] a refusal to permit bad debts to be included in operating expenses when deposits can be required to cover one month's consumption of gas;[30] and disallowance of salaries by a distributing utility to officials of a holding company as an operating expense.[31]

Numerous service questions are constantly being decided by the commissions. These relate to such matters as heating quality,[32] service abandonment, and service extensions. A wholesale natural gas pipe line carrier in Oklahoma was recently compelled to extend service to a distributing utility on the same terms that it had already contracted to sell to another distributing utility in the same territory.[33]

QUESTIONS of payment, like questions of service, are frequent. Many of these matters are handled without formal orders. There was a decision by the Nebraska commission that when the last date for payment of rates in order to secure the net, or discount, rate falls either on Sunday or on a legal holiday, or when it falls on Sunday followed by a legal holiday, or on a legal holiday followed by Sunday, the patrons should be permitted to take advantage of the net, or discount, rate on the next succeeding business day.[34]

A gas utility in Wyoming was ordered to cease the collection of a "usurious" penalty of 10 per cent for delay in payment of bills that were so worded as to confuse customers as to the terms of the penalty, and it was directed to draft bills in plain language charging no more than 3 per cent penalty for tardy payment.[35]

In New Jersey a hotel went into the hands of a receiver. The receiver was, of course, short of funds and for this reason contended that the usual deposit should not be required. The commission disagreed with this contention. It said, in fact, that insolvency of a customer which results in the appointment of a receiver is *prima facie* evidence of lack of credit or the inability to meet debts as they accrue in the ordinary course of business, and that there was no reason for modifying the usual deposit rule.[36]

HOW property shall be valued and what return shall be allowed are questions constantly arising in commission proceedings. In past years the fundamentals have been fairly well established, and no radical changes during the last year are noticeable. Our interest will probably center during the next year upon the natural gas invasion with its problems, for example:

Should it supplant artificial gas? How will generating plants be disposed of? What about the relations between producing and distributing companies?

And shall the states or the Federal government control interstate transmission?

Citations

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[2] Wichita Gas Co. *v.* Public Service Commission (Kan. Sup. Ct.) P.U.R.1931B, 442.
[3] *Re* Fulton Petroleum Corp. (Colo. 1930) P.U.R.1931A, 373.
[4] *Re* Western Service Corp. (Mo.) P.U.R. 1931D, 56.
[5] *Re* Allegany Gas Co. (Pa.) P.U.R.1931D, 415. On the question of temporary rates, see also *Re* Oklahoma Nat. Gas Corp. (Okla.) P.U.R.1931B, 470.
[6] *Re* Central Hudson Gas & E. Corp. (N. Y.) P.U.R.1931D, 40.
[7] *Re* Little Beaver Pipe Line Co. (N. D.) P.U.R.1930E, 433.
[8] *Re* Arkansas Valley Nat. Gas Co. (Colo. 1930) P.U.R.1931A, 415.
[9] *Re* Baldwinsville Light & Heat Co. (N. Y.) P.U.R.1931D, 410.
[10] U. S. Light & Heat Corp. *v.* Niagara Falls Gas & E. L. Co. (47 F. (2d) 567, P.U.R.1931B, 127.
[11] Great Northern Utilities Co. *v.* Public Service Commission, P.U.R.1931E, 1.
[12] *Re* Bowdoin Utilities Co. (Mont. 1930) P.U.R.1931B, 20.
[13] Public Service Commission *v.* Louisiana Pub. Utilities Co. (La.) P.U.R.1931C, 170.
[14] *Re* Dayton Power & Light Co. (Ohio 1930) P.U.R.1931A, 332. See also *Re* Columbus Gas & Fuel Co. (Ohio) P.U.R.1931C, 244; *Re* Iroquois Gas Corp. (N. Y.) P.U.R. 1930E, 60.
[15] *Re* Western Ohio Pub. Service Co. (Ohio) P.U.R.1931D, 1.
[16] *Re* Central Arizona Light & P. Co. (Ariz.) P.U.R.1931C, 272.
[17] *Re* Alabama Utilities Service Co. (Ala.) P.U.R.1930E, 473.
[18] *Re* Baldwinsville Light & Heat Co. (N. Y.) P.U.R.1931D, 410.
[19] Levy *v.* Atlantic Gas Light Co. (Ga.) P.U.R.1931C, 24.
[20] *Re* Customers of Boston Consol. Gas Co. (Mass.) P.U.R.1931D, 358.
[21] *Re* Brooklyn Union Gas Co. (N. Y.) P.U.R.1931D, 129.
[22] *Re* Peoples Gas Light & Coke Co. (Ill.) P.U.R.1930E, 34.
[23] *Re* Accounting for Gas Companies (D. C.) P.U.R.1931B, 436; *Re* Western Ohio Pub. Service Co. (Ohio) P.U.R.1931D, 1; *Re* Accounting for Merchandise and Appliance Sales (Wis.) P.U.R.1930E, 204; *Re* Cheyenne Light, Fuel & Power Co. (Wyo.) P.U.R. 1930E, 114.
[24] *Re* Accounting for Merchandise and Appliance Sales, *supra.*
[25] Bayer Co. *v.* Los Angeles Gas & E. Corp. (Cal. 1930) P.U.R.1931A, 526; Batchelder-Wilson Co. *v.* Southern California Gas Co. (Cal. 1930) P.U.R.1931B, 408; Technical Glass Co. *v.* Southern California Gas Co. (Cal.) P.U.R.1931B, 447; *Re* Long Island Lighting Co. (N. Y.) P.U.R.1931D, 353.
[26] *Re* Long Island Lighting Co. *supra.*
[27] Spear & Co. *v.* Duquesne Light Co. (Pa.) P.U.R.1931D, 387.
[28] *Re* Bowdoin Utilities Co. (Mont. 1930) P.U.R.1931B, 20.
[29] *Re* Coast Counties Gas & E. Co. (Cal. 1930) P.U.R.1931B, 105.
[30] *Re* Cheyenne Light, Fuel & Power Co. (Wyo.) P.U.R.1930E, 114.
[31] *Re* Western Ohio Pub. Service Co. (Ohio) P.U.R.1931D, 1.
[32] *Re* Pavilion Nat. Gas Co. (N. Y.) P.U.R.1931D, 53.
[33] Cherokee Pub. Service Co. *v.* Southwestern Nat. Gas Co. (Okla.) P.U.R.1931B, 116.
[34] *Re* Time of Payment of Charges of Common Carrier and Public Utilities (Neb.) P.U.R.1930E, 256.
[35] *Re* Cheyenne Light, Fuel & Power Co. (Wyo.) P.U.R.1930E, 114.
[36] Hotel Riviera *v.* Public Service Electric & Gas Co. (N. J. 1930) P.U.R.1931A, 262.

According to the News Reporters—

THERE are 16,000,000 customers of the gas utilities in the United States.

* *

THE inventor of the electric light bulb, Thomas Edison, lights his grounds at Menlo Park, New Jersey, with gas lamps.

* *

TELEPHONE lines are now being used for transmitting musical programs direct to hotels, residences, and restaurants which subscribe to this new service.

* *

ENGINEERS predict that the demand for electricity for operating television sets will, within ten years, increase the annual revenues of the power utilities by $120,000,000.

* *

THE check-up by the Consolidated Gas Company of New York reveals that the average American city dweller occupies thirty different homes in a lifetime of seventy years.

Where Commission Regulation Stops

The problem of drawing the line between those activities of a utility corporation which properly come under the authority of the regulatory bodies, and those which should be left to the corporation's own executives

By RICHARD T. HIGGINS
CHAIRMAN, PUBLIC UTILITIES COMMISSION OF CONNECTICUT

No particular industry, profession, or class has a monopoly of human ability, integrity, or honesty. The great scientific and industrial developments of the world have been brought about by individual initiative and by combined effort, by the enterprise and capital of men whose motives have been high and whose ability, integrity, and honesty compare favorably with that of men and women who have occupied governmental positions.

Progress and success, whether in the science of government or in the field of general business, are not the results of accident or ignorance; they are the outgrowth of skilled application of expert knowledge and of study of each particular subject matter by men who have consecrated their energies in their particular fields. A genius in one field is often a complete failure in some other field.

Neither the inventive or constructive genius of mankind, nor the trained executive and managerial powers of men devoted to legitimate enterprises, should be stifled by governmental mandate.

People generally are interested in the results of public utility operation and management rather than in the scientific processes which may produce the results. The government also is interested in the results, and by its direct or delegated powers it seeks to equitably control and regulate those results, to the end that the people generally may have the benefits.

Too much government is bad government.

Too much governmental control and regulation of any business or industry whereby individual initiative and skilled executive and managerial powers are stifled by unskilled gov-

ernmental interference, is bad governmental control and regulation.

THE fundamental principles of government do not presuppose that the government itself should engage in business in competition with its subjects or to the exclusion of the right of its subjects to engage in business—such as, for example, the public ownership of utilities. The right, however, to governmentally regulate utility operation is a well-established principle of law.

Does or should that right to regulate extend to and include the executive and managerial functions of a utility company's officers?

I believe it does not and should not.

But the line of demarcation between matters which should be subject to regulation, and corporate management which should not be controlled by governmental interference is difficult to draw.

IF we bear in mind the results of corporate management as distinct from the management itself it will help to differentiate between regulation and management. The most important results of corporate operation and management of utilities are safety of operation, the character, quality, and extent of service, and the price or rates which the public must pay for service rendered. The principles upon which rates are established by regulatory bodies are fairly well established by judicial interpretation and decisions.

It may be claimed that the Federal Constitution does not inhibit complete governmental control over privately owned common carriers and public utility companies, including control over all managerial functions. Neither does it by the provision that the Congress shall have power "to regulate commerce with foreign nations and among the several states and with the Indian tribes" expressly confer upon the Congress the power to regulate or interfere with the managerial duties of those engaged in privately owned commerce. The Congress and its delegated agents have the unquestioned power to regulate commodities which the capital, operation, and management of the company produce.

I BELIEVE our courts have frequently held that a regulatory commission cannot put itself in the place of a board of directors, and the directors are primarily the management.

My conviction, based on more than twenty years' experience in regulatory work, is that commissions should not invade and undertake to control by regulation the strictly managerial duties pertaining to the conduct of privately owned utility industries.

COMMISSIONS vested with the power of regulating public utilities have a great many corporations and industries coming under their jurisdiction. Commissioners, even if selected with the greatest care, cannot be expected to have the intimate and scientific knowledge which competent executives and boards of directors of the several industries have of the corporate machinery which is set and kept in motion to produce a public commodity. The commission, however, can readily analyze the finished product and determine whether it is safe, adequate, or reasonable for the public need, and if found wanting, it

can order the company through its corporate machinery and management to improve, modify, enlarge, or otherwise change the quality, quantity, and price of its product so as to reasonably satisfy public convenience and necessity.

The ways, means, and responsibilities of accomplishing the required results should rest with the utility company and not with the commission or with the government.

If the commission should be unreasonable in its orders, either as to rates or service or otherwise, such orders are always subject to review by the courts. It may be difficult to point out the boundaries between utility regulation and management, but the product of the corporate machinery, rather than the manipulation of the machinery itself, should be carefully regulated and controlled for the public benefit.

THE attitude of the public utilities commission in Connecticut has been to avoid direct interference with the managerial duties of the companies over which it has regulatory control.

It is possible that the commission may have at times overstepped the uncertain boundary line, but, if so, it was to such a limited extent or in such a coöperative manner that no discussion has been had or criticism made to which I could refer.

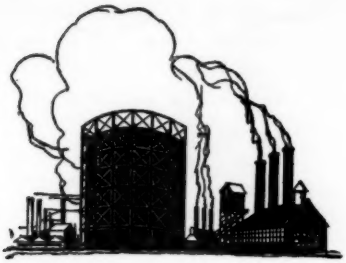
Four Outstanding Features in the Coming Issue of PUBLIC UTILITIES FORTNIGHTLY:

The Plague of Professors to Regulation: What the substitution of academic theory for practical experience has done to the law of competition in the case of the railroads—as seen by a utility stockholder. *By Herbert Corey.*

The Power Trust, the Politician, and the Plunderbund: PART V: Uncle Sam's war baby, Muscle Shoals, is put to use for the making of political thunder. *By Ernest Greenwood.*

A New Rule for Figuring Depreciation: The significance to the public utilities of the Interstate Commerce Commission's recent decision concerning the methods hereafter to be employed by the rail carriers. *By Harold Lane.*

What Commission Regulation Is Doing to the Motor Bus: Some of the problems that confront the carriers—and some of the possible methods of solving them. *By Donald C. Power.*



The Genie of the Gas Age

By BERTON BRALEY

THE gas that lifts the gusher to the sky
The gas that once was squandered in the flare
Of flaming yellow torches blazing high
No longer wastes its riches in the air;
It is done with reckless burning
And efficiently is turning
To the ordinary job of everyday,
Over hill and over hollow
It must dutifully follow
Where the pipe line stretches out to mark the way.

THE gas that was a menace and a threat,
That once was roaring power, unconfined,
Now meekly does the work that it is set—
A servant of the will of human kind.
It is cooking steaks and gruel,
It is power, it is fuel
That is changing women's drudgery to play,
And its lawless days are ended
As it takes the course intended
Through the pipe lines from a thousand miles away.

NOW it's hoarded as a store of weightless gold
As it rises from the subterranean sand,
Now it's metered and directed and controlled
For our uses—at the turning of a hand.
Here is comfort for our houses
And contentment for our spouses,
Here is energy to serve and to obey,
Here a wizard's spell is wrought us
And the gusher's breath is brought us
Through the pipe lines from a thousand miles away.

The Chance of the Ratepayer Against a Corporation

An analysis of the charge that no complainant can "win a rate case against a large corporation before the Public Service Commission of Pennsylvania"

By HENRY C. SPURR

UNDER the title "Rate Engineers Assail Public Service Board" the Wilkes-Barre *Record* recently carried a brief account of a report made by certain engineers appearing for ratepayers in a bitterly contested rate case before the Pennsylvania commission, known as the Scranton-Spring Brook Water Service Company Case.[1] Among other things, according to this newspaper, the engineers said:

> "This case—the largest water rate case ever to come before this commission or any other commission in the United States—has definitely proven one thing; that is that no matter how great the effort put forth by the complainants, they cannot win a rate case against a large corporation before the public service commission of Pennsylvania, as it is at present constituted and as it now functions."

The engineers go on to say that the value of the company's property as determined by the commission was such as to destroy "the last shred of confidence which might still be reposed in the commission."

THE essence of this charge is that ratepayers have no chance of success before the Pennsylvania commission, no matter how just their cause may be. If that were true, every member of the commission should be removed from office. Great caution must, however, be observed in accepting this conclusion for two reasons:

1. It should be observed that this is a report of expert witnesses to their clients.

Lawyers will recognize in a charge of this kind a very hoary form of vindication. It is one that has been made from time immemorial to explain the unfavorable outcome of lawsuits.

What, for example, is a defeated lawyer to say to his client? Shall the lawyer tell the client that as a result of the decision of the court or the jury the client was shown to be wrong? Even if the lawyer believed that, the

[1] P.U.R.1931B, 149.

client surely would not. That sort of statement would, therefore, not help the relations between lawyer and client very much. There is an easier way out. All the defeated lawyer has to do is to say to his client that there has been a miscarriage of justice. So it is always the court or the jury that is wrong, never the lawyer or his client.

2. Witnesses for parties to controversies before courts or commissions are seldom able to exercise a calm judgment as to the justice of the outcome.

Witnesses are a great deal like the spectators at a ball game, strong partisans of the home club. Any unfavorable decision of the umpire on balls and strikes against a home club batter is quite apt to be greeted by a chorus of jeers. It looks wrong to the fans. The umpire must be biased. Even radio announcers are not exempt from this form of criticism. Graham McNamee once reported that after he had broadcast the play by play account of a world series game between Washington and New York, he received a letter from a Washington fan bitterly assailing him for bias toward New York; and in the same mail a letter from a New York fan upbraiding him for bias in favor of Washington. It is evident that at least one of these critics must have been wrong, and the probability is that both of them were.

THE charge that it is impossible for ratepayers to receive fair treatment by the Pennsylvania commission might be passed without comment as the usual form of vindication likely to follow in the wake of a bitterly contested lawsuit, or as the mere partisan expression of witnesses for one of the parties to a lawsuit, were it not for the fact that it is a good illustration of the sort of thing out of which the propaganda against commission regulation springs. It will, therefore, be worth while to analyze this charge against the Pennsylvania commission.

The accusation that it is impossible for complainants to win a rate case against a large corporation before the commission is very sweeping. It is a generalization which no sound thinker would accept without proof, not only of a large number of decisions unfavorable to ratepayers, but also proof that in each of these cases the assertion that the claim of the ratepayers was just was unquestionable. That is so because the mere fact that a commission may decide in favor of a corporation as against a claim of the ratepayers is not proof that the decision was unfair. Few persons are so unsophisticated as to believe that either the ratepayers or the corporations are always right.

THE charge that it is impossible for a complainant to win a rate case against a large corporation before the commission is much weaker than the usual form of complaint that there has been a miscarriage of justice in a particular case. It might be difficult to disprove that there had been an unfair decision in a single case no matter how fair the decision had been. The case would have to be rediscussed from beginning to end, and the character of the witnesses and the weight of their testimony reconsidered. But an accusation that it is impossible for ratepayers to win a rate case before the commission can

be shown to be untrue by the decision of a single case in favor of ratepayers as against a large corporation.

It is a bold critic, therefore, who would thus open faulty logic to easy exposure, no matter how honestly he might believe he had been unfairly treated in a particular case.

Now, let us see if it is true that it is impossible for ratepayers—no matter how great the effort they may put forth, or in other words, no matter how just their claims may be—to win a rate case against a large corporation before the Pennsylvania commission.

In the seventeen years of its existence, twenty-five appeals have been taken from orders of the Pennsylvania commission in rate cases involving the valuation of the property of a public service company. Of these the orders of the commission were finally affirmed by the highest court in thirteen cases. Seven appeals were voluntarily abandoned and the commission was reversed in five cases. In each of these five cases the order of the commission was reversed because the court determined that the value fixed by the commission was so low as to be confiscatory.

In the face of such a record it would hardly appear that the corporations are always successful in their rate cases before the commission.

Again, take the matter of railroad rates. From orders of the commission in cases involving this class of charges twelve appeals have been taken. Of these five were affirmed, three were voluntarily abandoned, and four were reversed. The reversal in each case was based on the ground that the court found that the commission order was unjust to the railroad company. During the last four years ninety-nine formal complaints involving railroad rates have been heard by the commission, in seventy-two of which the complaints were sustained. In twenty-seven cases the complaints were dismissed.

Such being the facts, what foundation is there for the charge that ratepayers never have a chance before the Pennsylvania commission? How can that be honestly said when out of this group of complaints the ratepayers won practically seventy-two per cent of their cases?

An examination of the commission cases from which no appeals have been taken would not justify the highly improbable contention that ratepayers get no consideration from the Pennsylvania commission.

❡

¶ "The *charge that it is impossible for ratepayers to receive fair treatment by the Pennsylvania commission might be passed without comment as the usual form of vindication likely to follow in the wake of a bitterly contested lawsuit, or as the mere partisan expression of witnesses for one of the parties to a lawsuit, were it not for the fact that it is a good illustration of the sort of thing out of which the propaganda against commission regulation springs.*"

In a recent case[2] complaints were made alleging that new rates filed by a water company were unjust and unreasonable. The concluding paragraph of the commission's opinion reads as follows:

> "As has already been said, respondent's tariff has been on file since the inception of commission regulation in this state. Its rules and regulations still require that service lines be installed entirely at the cost of the consumer. Tapping charges are provided for. It is stated that service will be given only to property owners. All of these rules have repeatedly been found by the commission to be improper and unreasonable and their elimination required. In the supplement filed and here attacked, a number of rates are stated at so many dollars 'and upwards' or are stated to be by special contract. This is not in accordance with the commission's requirements that the tariff on file should contain specific rates applicable to each class of service. It is consequently assumed that in filing the new rates which will be required, respondent will take the opportunity to revise completely its entire tariff and its method of stating charges. An order will issue accordingly *sustaining the complaint* and requiring the Nokomis Water Company to file, post, and publish a new tariff which will contain a schedule of equitable rates designed to yield an annual operating revenue not in excess of $4,000."

MANY other illustrations of decisions unfavorable to public utility corporations could be given, but since a single instance would be sufficient to disprove the astounding charge made against the commission, the facts already mentioned furnish an abundant surplus of proof of the absurdity of the accusation.

The critics of the commission in this instance start with the assumption that the decision in the water case in which they were interested was unfair. Then they further assume that this is positive proof that the ratepayers have no chance before the commission in any case. The latter assumption has already been disproved by a recital of a few facts. Now let us examine the primary assumption.

Even the assumption that the decision in the particular case was unfair is unsound. It is known in logic as the Fallacy of Unwarranted Assumption, a begging of the question. The charge that the decision of the commission was unfair is a mere conclusion. The argument must be:

Major premise: The demands of the ratepayers were fair.

Minor premise: The commission refused to give the ratepayers what they demanded.

Conclusion: Therefore, the decision of the commission was not fair.

THIS conclusion is illogical because based on the debatable major premise that the claims of the ratepayers were fair. That was the very question up for decision. The fact that there was a long, hot litigation over it shows that there was a decided difference of opinion as to the fairness or justice of the claim; and that being so, the conclusion that the commission decision was unfair is unsound.

It would be just as logical—many persons would say the conclusion would be more apt to be accurate—to assert that the outcome of this case proved that the ratepayers' claims were unfair. The argument might be:

Major premise: The commission is a fair body of public officials favoring neither the ratepayers nor the corporations.

Minor premise: The commission after hearing both sides held that the company was entitled to higher rates than those which the rate-

[2] Walter *v.* Nokomis Water Co. P.U.R. 1930E, 353.

The Inevitable Charge of "Unfairness" by the Loser

"It will never be possible for any commission or any court or even any jury to escape the charge of unfairness. One side or the other must be defeated, or at least not get all that it wants. One side will, therefore, think it has failed to receive justice; and if neither side gets all it demands, all persons connected with the litigation may believe that they have to some extent been unfairly dealt with."

payers demanded in their complaint.

Conclusion: Therefore, the ratepayers' demands in this case were unfair.

Now, whether one would accept the conclusion that the commission was unfair or that the ratepayers were unfair would depend upon how much stock he took in the two major premises; that is to say whether he believed that the commission—having no financial stake in the case—was more likely to be fair than the ratepayers—having a financial interest in the outcome—would be inclined to be fair. Neither conclusion, however, would be sound because each would be based upon a premise not universally accepted as true.

However, the busy man of practical affairs will probably care very little about questions of logic; but he might well desire to know what there was in this case to call for such a criticism of the commission. Let us, therefore, briefly consider it.

Every question in this controversy over water rates before the Pennsylvania commission appears to have been contested with heat. There was, for example, a valuation of the company's property, and of this the commission said:

> "The testimony of the expert witnesses on behalf of complainants (the ratepayers) and respondents (the company) vary widely and to an extent scarcely explainable as a mere difference of opinion."

The figures given are very interesting. The company claimed that the depreciated value of its real estate, rights of way, and water rights amounted to $5,562,246. The complainants' estimate of this value was only $1,286,640. The commission fixed the depreciated value of this item at $3,781,456.

Here are some of the other large items:

The company's claim for impounding reservoirs depreciated was $7,236,683. The complainants estimated this value at $2,937,438. The commission allowed $5,007,679.

The company's estimate of the depreciated value of collecting reservoirs and intake wells was $1,228,601. The complainants' estimate was

$485,163. The commission allowed $891,827.

The company's estimated depreciated value of aqueducts and supply mains was $5,919,055. The complainants' estimate was $3,778,234. The commission allowed $5,451,656.

For transmission mains the company's estimated depreciated value was $3,218,210. The complainants fixed this value at $2,147,268. The commission allowed $3,054,091.

The depreciated value of tanks and standpipes was estimated by the company's witnesses at $3,573,643; by the complainants' witnesses at $1,513,311. The commission allowed $2,700,953.

The company claimed a depreciated value of $9,390,158 for distribution mains. The complainants' witnesses said these were worth only $5,280,584. The commission allowed $9,054,189.

The total depreciated value of the property claimed by the company was $39,976,705. The complainants' estimate of this value amounted to only $19,586,596. The commission allowed $33,187,571.

THIS wide difference of opinion on the part of the expert witnesses for the company and for the complainants is very remarkable. It evidently astonished the Commission and led it to say that the figures could scarcely be explained as a mere difference of opinion.

The statement that the commission's valuation was such as to destroy the last shred of confidence which might be reposed in it, made by witnesses in a case involving a most bitter controversy, will hardly be taken seriously by one not directly interested in the outcome of the decision.

When it comes to the matter of extravagant claims by experts, there is no presumption that experts testifying on behalf of a corporation are swayed in their judgment because of the wishes of their employers any more than that experts testifying on behalf of ratepayers are swayed in their judgment because of their employment. The commissioners and the members of their technical staff ought to be in a much better position to render an independent unbiased judgment than are the experts of either of the parties.

It will be seen that the commission did not adopt the figures of the experts who testified on either side. It would, therefore, be just as logical for the utility company to say that the decision of the commission was unfair as it would be for representatives of the ratepayers to say so. Perhaps the company does think so. It is not unusual for both sides to blame a tribunal which does not give them all they ask for.

THIS case is interesting from beginning to end, but without going too much into detail let us turn to the concluding paragraphs of the decision. They read as follows:

> "The commission accordingly finds that the rates contained in respondent's Tariff P. S. C. Pa. No. 5, originally made effective July 1, 1928, and the supplements thereto, are excessive and unreasonable, and are unduly discriminatory as against domestic consumers.
>
> "Therefore, the several complaints relative to the rates to domestic consumers will be sustained. Respondent company will be directed to file, post, and publish effective January 1, 1931, on one day's notice to the public and this commission, a new tariff reducing the total gross annual revenue to be derived by the company to a sum not in excess of $4,219,000; all the reduction

to be accorded to domestic consumers. This reduction is to be in addition to the reduction of $245,000 ordered on December 21, 1928.

"The company will further be required to rebate to domestic consumers all payments or charges made at higher rates under the said temporary order of the commission. Cash rebates shall carry interest at the rate of 6 per cent per annum."

It is apparent from the decision and opinion in this case that if the complainants did not get all they asked for, neither did the company. To an outsider this would hardly be regarded as convincing proof that ratepayers have no chance before the commission.

BUT human nature is such that it will never be possible for any commission or any court or even any jury to escape the charge of unfairness. One side or the other must be defeated, or at least not get all that it wants. One side will, therefore, think it has failed to receive justice; and if neither side gets all it demands, all persons connected with the litigation may believe that they have to some extent been unfairly dealt with.

So there is nothing unusual in this charge of unfairness leveled at the Pennsylvania commission. No human tribunal can ever escape it.

A commission may, of course, be wrong. So may a trial court, and so may a jury. Appeals may be taken until the case reaches the highest court in the land. That court may also be wrong. But how is anyone to know whether it is or not? It is just a matter of opinion as we have no superhuman tribunal by which the question can be settled.

In the absence of a superhuman court of appeals, discriminating persons are not likely to suffer the question of fairness to be determined by either of the parties to the litigation or their witnesses.

Interesting Items About the Rails

THE American railroads last year spent $300,000,000 for improvements in their safety devices.

* *

ALTHOUGH the railroads in the U. S. earned $440,000,000 less in 1930 than in 1916 their payrolls were $720,000,000 larger.

* *

TWENTY-FIVE per cent of all grade crossing accidents in the United States during 1930, resulted from motor vehicles crashing into the sides of railroad trains.

* *

FREIGHT shipped over the Northern Pacific Railway is now being delivered at the door of the addressee—as an experiment in meeting the competition of the motor truck services.

* *

EVERY time a train from the suburbs of Paris is late officials give out slips showing the time and place of departure and the exact time of arrival, so that commuters will have documentary evidence to explain their tardiness to employers.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

BERNARD HAGGERTY
Magazine writer.

"Roosevelt (President Theodore) never would have tried to make the public utilities a popular issue."

DR. FOREST RAY MOULTON
Astronomer.

"Charges of 'power trust' are, in actuality, only the efforts of a few politicians to weave for themselves a halo."

FRED W. SARGENT
President, The Chicago and North Western Railway.

"Nationalization of the power industry would be merely a first step toward the nationalization of all industry."

HOMER L. FERGUSON
President, Newport News Shipbuilding and Drydock Co.

"Most business men seem perfectly content to sit by and let the government take excursions into the other fellow's business."

SAMUEL S. WYER
Consulting engineer.

"The easily avoidable waste of natural gas last year was more than twice all the manufactured gas sold in the United States."

R. E. MCDONNELL
Engineering consultant.

"It is the constantly resisting effort of the power companies toward a reasonable rate that arouses the municipalities to the ownership of their own utilities."

JOHN SPARGO
Author and former socialist.

"I believe it to be irrefutable that every increase in the functions of government in industry and business lessens the sum of economic well-being and weakens the whole system."

FLOYD W. PARSONS
Author and economist.

"The honest forces of private business would be derelict in their duties if they remained silent in the face of this fight to socialize all industry and destroy property values."

C. E. GROESBECK
President, Electric Bond and Share Company.

"One of the most serious brakes upon returning prosperity, one of the many causes of our present situation, and one of the factors which must be considered in any general movement toward better things, is the fear of further infiltration of governmental dictation into the life and labors of the American people."

Will the Earnings of the Utilities Be a Target for Political Attack?

The Views of a Country Banker

Why it may prove poor strategy for a public service corporation to show profits, however honestly earned, at a time when other industries are drowning in red ink.

As told to
FREEMAN TILDEN

I HEARD in a roundabout way the other day that the administration at Washington is convinced that among the boiling issues that will send off clouds of steam in our legislative kitchen next December, when the biennial colic begins again, the dole—like Abou Ben Adhem—will lead all the rest.

This will be good news, if there is anything in it, for those who were girding on their armor to meet a storm of brickbats. The public utilities, for instance. On the other hand, news that you hear in a roundabout way has a way of not being so.

There is this much about it: you don't have to dally with annoying facts when you talk about the dole. It is more like talking about love, or psychical research, or the Good Old Days. On all those subjects men have been known to batter the atmosphere for hours on end, without being challenged to produce a single actuarial declaration. Those who are old enough to remember when liquor was liquor and bartenders were bartenders, can recall the delightfully maudlin and lachrymose condition known as a "crying jag." I expect the oratory about the dole will amount to something like that. (The stimulants sold nowadays, by the by, never produce the lachrymose effect. The imbiber usually wants to chew a policeman's ear.)

BUT, supposing my information was bad, then what may we expect to make the well-known welkin ring in December?

There will be the tariff, without a doubt. The Farm Board will come in for a singeing. Prohibition will have its weeks in court. I fancy somebody will have something unkind to say about Uncle Sam being the lifeguard in European waters. And then, no question, there will be some single-stick exercises concerning public utilities. There is perhaps some satisfaction in the thought that with so many paramount issues in the air all at once, no one of them will be such a helpless target.

In respect of the public utilities I had a few thoughts the other day, in the privacy of my den, which thoughts may be worth something or nothing. I'll take the chance of the latter, and enlarge upon them for a few paragraphs.

As a country banker, I wince every time I hear legislation and public utilities spoken of in the same breath. We fellows have been forced into the public utility field for investment by the exigencies of the investment situation, quite regardless of preference. Almost everything else has gone sour in our icebox. I could say some tart things about the bright young salesman who sirened us into real estate bonds. But what's the use? Live and earn—and then live some more and learn.

The utilities have come to be almost the last line of our defenses. If anything happens to them, I am going back to the farm.

Well, I was thinking. Quite a pardonable indoor sport, thinking is. I wish we had done more of it a few years ago. I was thinking, among other things, of what I heard once: "No nation can remain solvent in a world of bankrupts."

Good sense, that.

Then my next thought was: "No well-dressed man can remain inviolate in a mob of hungry strikers."

I guess that's true, too.

Finally I came to this thought: "I wonder if it is altogether a wise thing for the public utilities to make too good an earnings showing in a time when railroads, industrials, and the rest of the poor corporate orphans are drowning in red ink?"

With this question in my mind, I became extremely uncomfortable. Naturally I want the utilities to make money. My money—or rather the money I am responsible for—is in them. I need that income to pay interest and dividends. On the other hand—allowing for the fact that some of the utilities are not doing as well as others—are the legislative sleuths going to point at this fact of relative prosperity and shout: "Aha! I told you so! This man has money in his jeans! He must have stolen it!"

The natural answer will be, of course, "Oh, no, Mr. Policeman, honestly I didn't steal it! I saved it out of my earnings, by great economy! Honest Injun, I did!"

And the pitiless cop will reply; "Aw, g'wan! Nobody has any money these days unless they have been working some racket!"

Now, I have expressed this little possible drama in a gay manner, but I think there is something in it. Unfortunately, perhaps, the investment houses have been crying to the housetops that the utilities were

¶ *"As a country banker, I wince every time I hear legislation and public utilities spoken of in the same breath. . . . The utilities have come to be almost the last line of our defenses. If anything happens to them, I am going back to the farm."*

making money, much money, bolstering the statement with figures. I hear it every week. I see it every time I pick up a newspaper. As far as I am concerned personally, it is music to my ear. But what of the prairie orators? Does it fit into their rhetoric, or doesn't it?

"Well," perhaps you may reply, "what does this old codger want us to do—lose money for the sake of being able to point proudly at our poverty?"

I reply, "I don't know what I want. I don't want anything, maybe. I should be satisfied to let well enough alone. You never caught me in a cellar looking for a gas leak with a match. I'm—just wondering."

The public has no way to distinguish among big businesses and their varied opportunities and difficulties. It knows what it sees, at best; and seldom that much. It cannot look into the heart of an organization and perceive either excellencies of management or clever economies. To most people, a company is either making money or not making money, and that's all there is about it. It is paying dividends or it is not. It thinks in terms of broad generalities. Everybody is prosperous. Everybody is broke. Business is good. Business is awful.

But the politician is a scout for abnormalities. He does business on Deadly Differences. He is a What-Ho! man. He calls attention. He invites you to look at something very, ah, very suspicious.

Depend on it, he is going to comb over the earnings statements very soon, and utter a loud What-Ho! It is no use to invite this gentleman to a party for the examination of facts. Everything he sees is just what he always thought, and reminds him of something worse.

How are the utilities going to meet the issue? Bluntly, I think it is going to be advisable to be able to show and advertise some performances beyond and even prejudicial to the earnings statement. I know this is the sort of remark that makes the hard working and careful executive writhe. He is a steward, and wants to fulfil his part. That profit is his "face" as the Chinese say, and he doesn't want to lose his face. But these are unusual times.

In my opinion, we are, stating it broadly, in for a period of low interest and small profits. I hope I'm wrong. Wages must come down. No use to be mealy-mouthed about it. We dropped our savings bank interest rate to 3½ per cent the other day. The other day I had to reason with a stubborn director to show him why we shall have to cut our stockholders' dividend. He knew it well enough, but he couldn't bring himself to face it. He owns a store, and his profits have been cut in half, and yet he had

the cheek to say that "a bank is different." There is no essential difference. We are all in the same boat.

THE other day, a neighboring utility company received a petition from a group of people in the back country for electric lights and power. I have forgotten the number of applicants, but in the judgment of the company it wasn't sufficient to pay for raising poles, stringing wire, and so forth. It was insisted that the neighborhood get several more people on the petition. This could not be done. There are some folks who would like the juice, but are very hard up. So the plan fell through. This was, as I see it, a mistake—and similar incidents are a mistake. Here was a clear case where a loss should have been taken. This neighborhood is a growing one. It would have been a sound investment in service, and later—and not much later, either—a paying one.

ANOTHER case nearby me stares me in the face. A certain utility company has got into a mess with our state commission, after having first thoroughly antagonized the one newspaper that could have done them good. I am somewhat acquainted with the facts in the case. I feel that the utility company is fundamentally right, in the basic question. But there are times when it doesn't pay to claim all your rights—as when a wild automobile driver comes at you on your side of the road. Likewise there are times when it pays to lose a little money, intelligently. If it is lost intelligently, it usually finds its way home. But even if, by an unexpected break, it never gets home, something has been created that may prove a great consolation later.

I think it bad policy to wear diamonds when visiting a flop-house. Even though they are your diamonds, honestly earned and paid for. What is perfectly sound procedure in one set of circumstances, may be doubtful strategy in another.

We are in a queer mess in the world's history.

Will the Federal Power Commission Conflict with the State Regulatory Bodies?

EVER since the reorganization and rejuvenation of the Federal Power Commission this query has been raised by the daily press, by the state commissioners, and by the utility men. To what extent, if any, will the Power Commission intrude into the field of state regulation? To what extent, if any, will it seek to extend the arm of Federal regulation? The answer to these pertinent questions will be published in a coming issue of PUBLIC UTILITIES FORTNIGHTLY in an article written especially for this magazine by the chairman himself—GEORGE OTIS SMITH.

As Seen from the Side-lines

GOVERNOR Albert C. Ritchie of Maryland is one of the most interesting and one of the most attractive figures in the public life of this nation.

* *

AND for some reason or reasons which seem to baffle understanding, he is one of the least intimately known.

* *

As long as eight years ago, he was considered, in fact he was deeply considered, for the Democratic nomination for President of the United States. And only four years back he was more than a passive candidate for that signal honor; he was, in fact, an active, interested candidate.

* *

THE wheels of political fortune, mystifying, evanescent, did not turn favorably for him.

* *

THE Klan, McAdoo and Smith, with all the bitterness germinated by religious discussion, commanded the attention, produced a disastrous convention in Madison Square Garden and an amiable, likeable candidate and a hopeless cause.

* *

IT can be remembered that Mr. William Jennings Bryan was alive and industrious at that time. Mr. Bryan, with his presumed following, exerted a destructive influence upon any cause which he chose to arraign, and it can be remembered that Governor Ritchie would be looked upon by him as an unregenerate wet and an unpromising reactionary.

* *

FOUR years later, the influences behind Governor Smith preponderated, and Mr. Ritchie, along with all the other candidates, was placed in the position of relative obscurity.

* *

IN the meantime, he has continued to saw wood. He has employed the usual, familiar, perennial tool of Maryland-Virginia state's rights. At least, he has been consistent. He seems to believe that he is following in the path of Thomas Jefferson, and any question of his sincerity appears to be automatically and mechanically waived.

* *

HIS recent speech to the American Bar Association revealed him in his unyielding attitude. He denounced public ownership as wasteful and as productive of sterility. He accused men like Norris and Pinchot, by inference, of indulging in extravagant rhetoric, and of selecting the power issue as a football of politics in order to escape the politically dangerous issue of prohibition.

* *

HE said that electricity is the smallest item in the budget of the average home and, therefore, the one least assailable. Rates have come down in proportion to the decreased cost of living, he maintained. The utilities have responded to the pressing requirements of the day by supplying work and by keeping up their wage levels, he insisted.

* *

As a whole, the electrical industry is correcting the evils which its opponents charged against it, he asserted, but it must not be blind to the fact that it must continue to put its house in order until it has the appearance of a New England sitting-room on a Sunday afternoon.

* *

A STATEMENT of his speech that caught the public notice this time was this: "I have more confidence of a beneficial outcome under enlightened business leadership, with a minimum of governmental interference, than I have of getting very far by making this the football of politics and politicians."

MORE important, we thought, was his declaration that the states themselves have the right to regulate the public utilities when they choose so to do.

* *

HE objects to the Couzens Bill for national regulation of interstate rates, and, by objecting to it, he arrays himself against Mr. Hoover in *that* matter. Government commissions mean government bureaucracy, he declared, and bureaucracy means the limitation of the rights of the people at home. Ritchie meant, as Jefferson said and as Bryce later expounded, that government in the smallest unit, closest to the people, is the best government, after all.

* *

OF Mr. Ritchie's future there will be widespread speculation among those business and political interests who make it their business to frame issues and to procure the nomination of candidates.

* *

MESSRS. Norris, Brookhart, and Pinchot are the loudest in their attacks upon "the intrenched interests" and in their defense of public ownership, but Mr. Ritchie happens to be a member of the political party in which their views are the more popular.

* *

WHILE we are in the business of not forgetting, let us remember Mr. Smith's Denver speech, devoted solely to the power issue, with a declaration for ownership by the public and nonforfeiture of the water-power sites. And we should continue to remember that Governor Roosevelt, who has the pole in this contest of today, is an advocate of the same theory.

* *

OUT in the West, where corn and wheat are being dumped into the public highways and village squares as a sign of repudiation of the financial East, it can hardly be expected that a conservative delegation will be chosen to the Democratic national convention. The difficulty is to keep that surging feeling within the realms of what was once known as "Bloody Populism."

MR. Ritchie is not of the Senate set, where the liberalism or radicalism of the Democratic party prevails. That is a handicap, yet one that can be overcome.

* *

GOVERNOR Ritchie, by his speech to the American Bar Association, stands today as the foremost exponent of what is known as conservatism within the Democratic party. He stands somewhat alone. For that reason, if for no other, he will attain the conspicuousness of which he was deprived four years ago and eight years ago.

* *

VOTING by reputation has become a fixed custom, especially in a generation which has found the two old parties "as alike as two peas in a pod." To whom can the financial and utility interests turn in the Democratic party, if not to Ritchie? To whom can the exponents of state utility regulation turn, if not to Ritchie?

* *

WE see signs that utilities regulators have been awakened from their lethargy. We see indications that they will make claim to the rights which they relinquished during the war and which they have not reclaimed.

* *

RITCHIE is the Underwood of the Democratic party today, but a more personable one. His position has the embarrassment, in his party, of a minimum of numbers. Further, he represents a cause, in his defense of the utilities, which his supporters would naturally prefer to pigeonhole in a national convention. Moreover, the issue seems to be destined to obscurity by the competing issues. Prohibition, jobs, taxes, soldiers' bonus. All of them are more dramatic.

* *

IF Mr. Ritchie permits himself to be regarded as an academician, he will permit himself to be regarded as a safe but uninteresting person.

John T. Lambert

OUT OF THE MAIL BAG

The Legal Aspects of the Submetering Controversy in New Jersey

I HAVE noticed in several issues of PUBLIC UTILITIES FORTNIGHTLY statements made similar to the one to which I am about to direct your attention, and which occurs in the issue of July 9, 1931, in the article on "Current Trends in the Regulation of Power Companies," by Ellsworth Nichols.

He says on page 23:

> "The outstanding controversy involving a refusal to furnish electricity to landlords for submetering arose in New Jersey, where it was held by the state courts that this service should not be required of an electric utility. The commission decision was upheld in the state courts and an appeal was taken to the United States Supreme Court. The outcome of this appeal, which is pending at the time of writing, will probably shed more light upon the subject."

It is true that the decision in Sixty-Seven South Munn, Inc. is a decision in the outstanding controversy involving a refusal to furnish electricity to landlords for submetering, as stated by Mr. Nichols, since the controversy found its way into and was decided by all the higher courts in the state of New Jersey, as well as by the board of public utility commissioners thereof. The decision of the supreme court of New Jersey, found reported under the title, "Sixty-seven South Munn, Inc. *v.* Public Utility Comrs." in 106 N. J. L. 45, P.U.R.1929E, 616, 147 Atl. 735, was taken to the court of errors and appeals of the state of New Jersey, and was there affirmed upon the opinion of Mr. Justice Case.

It is not true, however, that an appeal was taken to the Supreme Court of the United States. An application was made to the Supreme Court of the United States by way of petition for a writ of certiorari to review the aforementioned decision of the state court. This application was thoroughly argued before the United States Supreme Court, and on March 9, 1931, that court denied the application for the writ of certiorari.

This decision of the United States Supreme Court ended the controversy, so that it may now be said that the practice of submetering and the right of a property owner or submetering company to demand, and of a utility company to refuse, the furnishing of electricity to be submetered has been completely set at rest in New Jersey.

—WILLIAM H. SPEER,
General Attorney,
Public Service of New Jersey.

* *

EDITOR'S NOTE: The word "appeal" in the article mentioned was used by the author in the popular sense without distinguishing between the technical appeal and the writ of certiorari as used in legal terminology. At the time the article was prepared announcement of the action by the Supreme Court had not been received.

The "Taxless Town" of Chanute, Where the Utilities Are Municipally Owned

IN a recent issue of PUBLIC UTILITIES FORTNIGHTLY appeared a brief reference to the small city of Chanute, Kansas, the "taxless town," where the profits derived from the municipal utilities are reputed not only to defray all expenses but to permit the spending of generous sums for public improvements. Since the publication of this item, the newspapers have been giving widespread publicity to this experiment, and have dilated upon the town's $122,610 budget (which "will be chiefly met out of earnings from the town's municipal gas and electric plants"), to the $350,000 memorial building and to the $75,000 airport, both of which are to be similarly paid for.

Chanute, you know, has a population of about 10,000 souls, men, women, and children, black as well as white. That means that there may be 4,000 gas and electric meters in town; 2,000 individual consumers. So our informants ask us to believe that these 2,000 householders bought enough gas and electricity in five years to account for available public funds (profits, that is, from the gas and electric business) of a minimum of $527,560.

The average is an average monthly profit—not bill, but profit—from each and every Chanute householder of $4.40 per month.

That is certainly a remarkable showing. I think you will find that the average total bill—not profit, mind you—of gas and electric companies in the metropolitan district of New York is under $4 per month.

Whence, then, this vast average consumption in Chanute?

Well, I have not been in Kansas in eight years, but knowing the state as I do, I should infer that Chanute is cashing in on an oil boom. When that plays out, a large part of Chanute's plant will exist for nobody's needs and will cost plenty to carry. Chanute will discover that selling gas and electricity to only about 4,000 local accounts will hardly leave enough over to put calcium chloride on enough dirt road to do any broad gauge talking about.

If, on the other hand, Chanute is wholesaling power and gas to other towns, the report of its prosperity will have to be modified by regard for the fact that other towns are paying out their hard cash, besides taxing themselves in the usual manner. Thus Chanute's pride and glory comes out of the pockets of the neighboring towns,—or out of the pockets of the consumers of oils and oil products.

Apparently Chanute is just another town venturing into the public utility business, and is prospering in it because it enjoys a good external market. Certainly, the good people of Chanute are not building up an average annual profit of over $100,000 out of selling gas and power to themselves! If they were, it would merely mean that instead of paying their taxes through regular tax bills, they are paying them on their gas and electric bills. But they are paying them; so what is the difference, unless, as is most likely, the money is coming from outsiders?

Chanute is just experiencing unusually bright sunshine. I wonder whether, like another municipal plant I saw in 1927, it has its *coterie* of politically favored "meter readers" whose perfunctory appearances were almost wholly superfluous, except to collect $200 or $250 per month? I wonder whether, like some other municipal plants, it employs two to three times as many employees per domestic kilowatt hour sold as a comparable private plant which pays taxes to city, county, state, and nation, and is billed by the community for its boiler and condenser water besides?

Other towns in Kansas near Chanute actually gave their plants away for little or nothing to the old Kansas Electric Power Company, (now Insull-controlled), to be rid of the cost and trouble they occasioned. Impartial and dispassionate examination, when not tampered or interfered with, almost invariably shows public plants to be less efficiently operated than those privately owned. Even a police force cannot be kept out of politics.

Why should one believe in miracles from a municipal gas and electric business which is in no wise responsible for its own economic destiny, but can allocate large gobs of its costs to other municipal departments?

—Albert J. Franck,
Far Rockaway, New York.

Educating the Man-on-the-Street in the Problems of Utility Regulation

Of all the publications that come to my desk I think I derive the greatest benefit from Public Utilities Fortnightly; I only wish that its messages and discussions could be gotten before the masses.

Many of our business and governmental problems could be made easier if we could only get the Man-on-the-Street to understand that he who opposes government operation of the utilities is like the boy at the dyke, who by saving the dyke saved his country. Whether private ownership and operation of utilities are maintained may of itself be of little interest to millions of our people but to save the country from the engulfing forces of radicalism, communism, and socialism is a problem no patriotic citizen can ignore; and the place to stop the tide is where it seems most likely to break through.

For the time being those forces that are against our fundamental American principle of private initiative and enterprise are pounding against the utility organizations. They call them the "power trust." Some wonder what "trust" means. I think it may be defined as the name given to any business organization under *quasi* political attack. In our time it has been applied to money, oil, steel, wheat, railroads, and power, as each in turn became the point of attack not alone of its particular political enemies, but of the political enemies of our national principles—principles which, whether right or wrong, have developed the greatest nation revealed by world history and removed all limitations from individual ambitions.

I do not believe our people want their opportunities lessened nor the possibilities of their individual achievement circumscribed either by a system of caste out of which mankind has so laboriously and painfully worked himself, nor by the dead leveling process of ever-threatening socialism.

To get the true doctrine to the Man-on-the-Street is our task. He who discovers the way best to accomplish it will deserve much from a grateful people.

—F. W. King,
Executive Vice-President,
Virginia Public Service Co., Alexandria, Va.

What Others Think

A Champion Appears to Do Battle For Commission Regulation

THE speech on utility legislation made by Governor Albert C. Ritchie of Maryland before the utilities section of the American Bar Association at Atlantic City on September 15th has been widely hailed as one of the most important political events of the month and has undoubtedly provoked more discussion than any political utterance by a Democrat since John J. Raskob laid his "platform" before the National Committee last March.

The public attention which the speech received was largely due to the dramatic circumstances surrounding it. Governor Ritchie is a candidate for the Democratic presidential nomination. The leading contender for that place is Governor Franklin D. Roosevelt of New York, one of the outstanding advocates of state development of power resources and state operation. Although several of the other Democratic hopefuls do not agree with Mr. Roosevelt on that point all have remained silent and refrained from taking issue with him. Then suddenly, without warning, the mild-mannered Maryland governor stepped to the platform before the American Bar Association and challenged the views of his opponent in a vigorous, forthright, straight-spoken speech which was in no respect the discussion of a compromiser.

Not only did he declare himself against government ownership but he stated as a public policy that "I am for the irreducible minimum of legislative interference in every field of human effort—including the public utilities." Although this text is not new in American politics and goes back to origins in the Jeffersonian theories, it is a position which has seldom been taken by politicians in these days when the functions of government are increasing at an enormous rate and when legislative panaceas are being sought for everything from over-indulgence in liquor to the impoverishment of agriculture.

Governor Ritchie pointed out that his policy is by no means one of *laissez faire*. He said the problem was one for state regulation and that if some of the state commissions were weak and ineffective that was a matter for the particular states to handle. His general policy on power regulation was stated as follows:

> "The national policy, it seems to me, must not be government ownership. . . . Our political ideal always has been to encourage private enterprise, to bestow upon it the earned rewards of brain and labor, and to keep open the door of opportunity. Here, I believe, is the key to our material success. . . . The American idea of governmental sovereignty is to define and limit governmental powers. . . . It does not permit the government . . . to absorb business or undertake enterprises beyond the legitimate needs of public administration. Our detours from this principle are already too many. There should be no more. . . . The subject is one for the best brains of the land, regardless of party. No good can come from trying to frame political issues about it or from treating it from any other than an economic standpoint. . . . It is true that the manufacture of political issues has become something of a national industry, but I am as strong for politics in a partisan sense keeping out of the utilities as I am for the utilities keeping out of politics. . . . And without meaning to question anybody's sincerity, I may be permitted to wonder whether gentlemen who discourse so extravagantly and so passionately on the subject are not really laying down a barrage or a smoke screen with which they hope to hide other issues,—such, for example, as prohibition,—about which they may not think it politically wise to speak so boldly."

THE speech was of the utmost significance to the utility industry because Governor Ritchie is one of the few men in public life who has had the courage to come out openly and make a counter-attack upon the public men who are persistent opponents of the utilities.

There are numerous politicians in prominent positions—in the Senate, in governorships, in Congress, who do not agree with the views of such champions of the anti-utility group as Senator Norris and Governor Pinchot. One never hears a peep from most of them, however. They sit glued to their seats by a mortal fear that if they make a speech stating their views they will be immediately charged with being "tools of the power trust" and that insinuations will be made that they either own stock in utilities or otherwise have some special personal interest which accounts for their opinions. One could name about a dozen and a half of this type among the regular Republicans in the Senate alone. It has developed to such a point that those who believe in private operation under state regulation state their views in the Senate even less often than those who support President Hoover rise to defend him—which was so seldom last session that it amounted almost to a national scandal on one or two occasions.

Governor Ritchie's speech brought forth no such public castigation as most of the more timid politicians seem to fear, although the governor, as an open presidential candidate, was peculiarly vulnerable. So far as I have seen only one newspaper, in all the dozens which commented, questioned his motives.

The New York *Times* characteristically explained what Governor Ritchie said but made little comment except that he "can have no great hopes of nomination" because "he is too downright, uncompromising, unconciliating." They added, however, that "one must be a hardboiled cynic to regard the address as inspired by presidential ambition." General agreement was indicated by the statement that "government in business has been a conspicuous failure."

MUCH more vigorous comment came from the New York *Herald-Tribune* which felt at last that a real Democratic hero had appeared.

"No doubt he will be assailed," it said, "as a tool of the utility barons as he has been called a creature of the liquor interests. But no one not a fanatic can doubt the sincerity of his convictions, in the one case as in the other, or the courage that prompts their expression. We congratulate the Democratic party on the possession of one leader whose utterances are as true to the doctrine it professes as they are unequivocal."

Even the Baltimore *Sun*, perhaps the leading liberal newspaper in America, found Governor Ritchie's speech "persuasive" though needing more documentation "to be fully convincing." That paper said that he "pretty effectively disposed of government ownership and operation as a principle likely to bring any really happy solution of present abuses" but added that having disposed of government ownership and operation as "a faulty scheme of public utility control, the governor's speech was a bit vague on how other schemes of public control can be made to work effectively."

The Washington *News*, Scripps-Howard organ in the Capital, assailed Governor Ritchie somewhat sarcastically and insinuated that a partial purpose of his speech was to get campaign contributions from the utility leaders.

"Part of the governor's charm," it said, "is the frankness of his ambition to be President. The bid he is seeking to make on the utilities issue is not directed merely at the campaign contributors among the utility magnates, but at the voters."

The Philadelphia *Public Ledger* said that the Maryland governor would "doubtless be denounced by Governor Pinchot as a creature of the utilities," but expressed its own opinion that he "talked sound common sense."

The Newark *Evening News* agreed

World-Telegram, N. Y.

"SONNY BOY!"

that "it would be hard to combat Governor Ritchie's assertion that the history of economic legislation is largely a history of mistakes." It said of his speech in general that "this is not the outgiving of a hide-bound standpatter but the voicing of common sense by one whose political philosophy has made an impression upon the country at large."

The Washington *Post* in a characteristic editorial headed "A Real Democrat" praised his adherence to the "fine old traditions of the Democratic party."

Most Washington correspondents who wrote concerning the speech predicted a considerable advance in the Ritchie candidacy because of it. Obviously it strengthened Ritchie with the business men of the country who have never accepted the idea of government ownership, whether they were directly interested in utilities or not. It was a direct challenge to Roosevelt's views on power and most of the correspondents

believed that it would have a tendency to draw the opponents of Roosevelt together behind Ritchie.

Franklyn Waltman, Jr., writing in the Baltimore *Sun*, said that the speech "created more political discussion and speculation than anything that has happened since the Hoover moratorium in June." He found that the speech had, temporarily at least, raised Ritchie's candidacy "into second place within Democratic ranks."

Fraser Edwards of Universal Service interpreted it as the beginning of a "Stop Roosevelt movement." Carlisle Bargeron of the Washington *Herald* believed that Ritchie had "given up any hope of the bolt striking him and has agreed to make the sacrifice which is the expected lot of the man who goes out openly against the New York governor."

Eliott Thurston, writing in the Philadelphia *Record*, said that the eastern business interests in the Democratic party see in Ritchie "an exponent of their own views" and regard him as "the most logical figure" on whom to concentrate to block Governor Roosevelt.

George A. Benson, in the Minneapolis *Journal*, said that Ritchie's speech "fits into the Democratic executive committee's plans so nicely as to appear almost a part of their program."

—HAROLD BRAYMAN

Will the Appliance Retailer Fare Better With the Utility Company or the Manufacturer?

UP to now we have been led to believe that there are only three interested parties to be considered in the controversy over the merchandising of appliances by utility companies—the public, the utilities, and the retail dealers.

Now it appears that a fourth and important party in interest has been entirely overlooked in these discussions—the electrical manufacturer.

The retail dealers who have fought so valiantly and, in some states at least, so successfully for the enactment of utility anti-merchandising statutes seem to assume that if the utilities were put out of the merchandising field, the volume of merchandising business now done by the utility companies would not fall off, but would be redistributed among the private retail dealers. If this assumption is warranted, the manufacturers and wholesalers of gas and electrical equipment would have no cause to complain. What do they care whether flatirons are sold to the public by the public service company or by John Smith & Sons, as long as they are sold?

But is the assumption warranted? An editorial in *Electrical World* shows some reflection on the subject:

> "There is no reason to believe that manufacturers now doing the bulk of the business would relinquish their hold just because of the destruction of their major outlet. With the promotional force of the utility gone from the field, the only alternative for the manufacturer would be to seek new and stronger outlets. Experience has convinced him that he cannot secure national volume through present dealers. Trained selling organizations would be thrown into the field and would offer the dealer a type of competition infinitely more formidable than that of the utility. Witness what has happened in the refrigeration field, where manufacturers own or control their own retail outlets. Dealers well know what this competition has meant to them.
>
> "Under the present set-up, with the power company in the field coöperating with dealers and creating business for all, the manufacturer is interested in building sales through *all* outlets. But if he is driven to control his own retail outlets, he will then become the dealers' most active competitor. Which would be more in the interest of the dealer—a type of competition under which the manufacturer would be interested solely in selling his own product or the coöperation of the utility in promoting the sale of all good electrical appliances regardless of brand?"

THE manufacturers seem to be a bit late coming into court, but it must be admitted they come with a strong argument. If private dealers succeed in chasing the utilities out of the merchandising field, they must be prepared to assume all the sales work formerly done by the utilities—or perhaps face competition of a kind and from a source never before encountered.

This is not a threat on the part of anyone. It is simply the logical and natural evolutionary outcome of the problem of ample retail distribution.

—F. X. W.

ANTI-MERCHANDISING LEGISLATION NOT IN DEALERS' INTEREST. Editorial. *Electrical World.* August 22, 1931.

Why the Field of Regulation Is a Natural Stage for Political Clowning

UTILITY regulation will always be subject to political attack because, by an unfortunate but purely coincidental alignment of the subject matter with which it must deal, it offers an excellent background for political attack.

Chairman Coffman, of the West Virginia commission, recently expressed this thought in a statement to the *United States Daily.* He stated:

> "The practice of criticizing state and Federal regulation of public utilities lends itself well to political claptrap. By his own *ipse dixit* the attacking party assumes the rôle of champion of the people and, in a period of unemployment and consequent social and political unrest, it is easy to get the public ear to assert that the citizen is paying too high a price for his water, fuel, light, power, communication, and transportation service, and that the state in issuing certificates of necessity and convenience for water power development is giving away property of great value. . . . The utilities in this state (West Virginia) have stood mute in the face of these broad and general assertions; and the impartial citizen who dares to question them and to propose a dispassionate study of the results already accomplished by state regulation is summarily denounced as a friend of the waterworks trust, the gas trust, the power trust, the telephone trust, the railroad trust, or whatever 'trust' at the moment appears to be in bad repute."

Approving of Chairman Coffman's remarks, the *Wall Street Journal* finds it remarkable that so large a portion of our electorate well knows of the hollow humbuggery that lies behind these attacks, and still takes the result as a matter of course, nay, even expects it as a part of the general political show. The editorial states:

> "A curious phenomenon of our 'political talking is the survival of elementary ideas and phrases in which no one any longer really believes. Read over some of the party platforms, state and Federal, read them aloud, with due emphasis, and, if you can, avoid a bitter laugh'. Why do we think it necessary to deal in this counterfeit currency in politics when we do not dream of employing it for anything else? One must go to the vaudeville shows in the ten, twenty, and thirty circuits—if there are such things today—to find its counterpart."

Of course, there may have been instances where criticism of the efficiency of regulation as practiced in some states has been warranted, but certainly these instances do not happen simultaneously in the forty-eight states. But the political attack has been quite widespread. The probability is, however, that the present surge of political attack on commission regulation, which appears to have been skilfully engineered, is a passing phenomenon. Legislative investigations following these attacks have legislation the aim of which was to strengthen commission regulation.

—J. D. C.

STATUS OF UTILITY REGULATION IN WEST VIRGINIA. By Wade I. Coffman. *United States Daily.* August 26, 1931.

OUR CHERISHED COUNTERFEITS. Editorial. *The Wall Street Journal.* September 3, 1931.

How Much Farther Are the Large Utility Companies Likely to Expand?

UTILITY leaders who nourish the belief that the utility industry is destined for indefinite expansion will find substantiation for their views in the book "Onward Industry!" by James D. Mooney and Alan C. Reiley. The story of the development of the utility industry has adhered closely to the pattern described by the authors of this book for the country's basic industries. The beginning was marked by small compact units in which all authority and responsibility were concentrated in one executive head. The next stage was one of rapid expansion which saw the development of the large holding companies; more authority and greater liberty of action were conferred upon subordinates. In its present stage of development rapid growth has been succeeded by relative stabilization. The consequent economic and social importance of central control and central planning are increasingly recognized. This would seem to be one of the most potent arguments, if any were needed, to justify the existence of the large utilities holding companies.

From this situation, however, are derived a host of problems of organization. For example, is there a practical limit to the size of a public utilities company? Must the law of diminishing returns call a halt to future expansion?

The answer of this book is emphatically "no!"—under certain definite conditions. Assuming the application of the principles of organization, "it is impossible to conceive of any human organization too vast for organized efficiency."

THE onward march of all industry in the future must be consciously directed. According to the authors of this book, the means for directing the growth of industry in the proper channels is the application of the principles of organization. What are these principles and how can they be identified? Every form of human association reveals them. The authors develop historical evidence to prove that an orderly correlation of these principles results in a more effective collective human effort.

This monumental work is an important addition to practical human knowledge. Mr. Mooney is vice president of the General Motors Corporation in charge of overseas operations; Mr. Reiley recently retired from the Remington Typewriter Company, where at the time of his retirement he was advertising manager. The product of their joint authorship is a work remarkable for its erudition and for its evidence of painstaking research.

Defining organization as "the form of every human association for the attainment of a common purpose," the first principle is shown to be "coördination." The other two principles developed are the differentiation both between gradations of authority (scalar principle) and between kinds of duties (functional principle). To illustrate: a general and colonel show differentiation in authority (scalar) while the difference between infantry and artillery is functional.

Why have certain organizations in recorded history survived the disintegrating forces of time while others have succumbed? How explain the success of the few and the failure of the many? To seek an answer to these questions, the authors commence their historical studies of organization principles with the governmental organization in antiquity. The organizational weaknesses of Athens and Sparta explain the decline of these states; the secret of the greatness of Rome was her genius for organization; her decline was due largely to the falsity of her objective. The church, the army, modern government, and modern industrial organization are all minutely examined to discover the principles of organization.

Fascinating as is the study of organization in church and state, in the army and in industry, the authors do not intend this to be merely a narrative of academic interest; they seek to point out what can be learned from the practical experience of these entities that will help modern industry achieve its objectives.

Every public utility holding company and, to a minor extent, every public utility operating company is confronted with the problem of relative decentralization. How much autonomy should be conferred on local units to obtain efficient operation and at the same time retain the required measure of centralized control? How should the line and staff organization be used to achieve better results?

The constructive solutions to these problems contained in this book will prove valuable to any executive who does not believe that everything is for the best in the best of all possible worlds.

—DONALD ARMSTRONG

ONWARD INDUSTRY! The Principles of Organization and their Significance to Modern Industry. By James D. Mooney and Alan C. Reiley. Harper & Brothers, Publishers. $6.00. 1931.

Advertising Campaigns by Utility Companies That Affect Other Industries

THE American public has begun to consider commercial advertising seriously. The advertising of products with fictitious claims has caused an adverse reaction in some quarters. Again, the cost of advertising in comparison with production cost has caused part of the public to wonder whether the expense of advertising has not become top-heavy—a parasitic growth resulting from mass production. This speculation arises upon such revelations as the fact that for every 5 cents taken in by a certain cigarette manufacturer 3 cents is devoted to its sales campaign, leaving but 2 cents to be allocated to production.

Not only the quality and quantity of current advertising, but even the ethics of advertising has been called up for public review. Recently certain rural telephone companies attempted to cut down the growth of "disconnects" by putting out data showing the relative economy to the farmer of telephony as compared with using his automobile.

Here is a letter from a subscriber of the telephone journal *Telephony* which was reprinted in that publication. Addressed to the editor, the letter states:

"I hope you get into a complete and profitable discussion of the 'contest' between telephone communication and unnecessary 'flivver' transportation.

"This may be a somewhat delicate subject, as under present ideas of business ethics it is not considered good form to indulge in comparative advertising. I recall that one tobacco company was induced to change its slogan boosting a certain brand of cigarettes because it reflected injuriously on the candy business. However, the change did not come until the head of the concern earned in salary and bonus for increased sales more than a million dollars.

"While we need not resort to an advertising campaign declaring war on the 'flivver,' it is necessary for the rural exchange manager to be able to set his patrons right and get them to do some real thinking on this important matter. A large portion of the farm surpluses now glutting the market—and keeping prices down—was formerly consumed by the horses on the farm and the numerous horses kept by town and city residents.

"In addition to losing his grain and hay market in town to the oil industry, the farmer himself is trying to see how much gas and oil he can consume on the farm, not only in his tractor but also in his pleasure car.

"While the farmer cannot be criticized for owning a modest automobile for necessary business trips, the fact remains that he will better his own condition by using his telephone as much as possible and his 'flivver' only when it can serve him and the telephone can't. In short, the farmer should become a user of long distance outside the limits of his free service area in

order to cut down the cost of automobile transportation."

Figures computed by another telephone man show that it cost the farmer on an average of $1.50 an hour plus driving time to operate his automobile, while his rural telephone service cost him but $1.50 a month. The figures are compelling, but how will the automobile dealers, and petroleum dealers, relish such an advertising program? If they struck back—would it hurt the telephone industry much? This form of advertising by telephone companies or any other public utility companies ought to be considered carefully. It involves a very delicate matter of public relations.

—M. M.

RURAL TELEPHONES *v.* THE FARMER'S FLIVVER. Editorial. *Telephony.* August 8, 1931.

Do We Need a Unified National Transportation Service?

"WHEN we seriously consider the enormous expenditure which has been incurred to establish these roads, the numerous buildings and farms which are contiguous to them, the well-constructed bridges by which we cross every stream and river throughout the empire, how conveniently they stretch through every town and village of the slightest note, and how much the value of property in those towns and villages depends upon direct and convenient communication with other districts, we cannot help confessing that the establishment of new lines of roads in different directions must, for a time, have the effect of depreciating the value of immense property and producing excessive inconvenience to many individuals and to many estates."

THE above quotation is not, as one might at first blush suppose, an argument in favor of the railroads against motor bus competition. It is taken from a document of 1833 and is cited by Chairman Paul Walker, of the Oklahoma commission, to show that however modern the argument may seem as being on behalf of the railroad, it was the identical argument used against the railroads when they were first struggling for establishment in the face of the then existing system of canals and turnpikes.

Chairman Walker then goes on to show that the highway road system was not destroyed by the introduction of the steam railroad, but has grown and grown until now suddenly with the advent of the automobile it turns again upon its ancient competitor with the rôles reversed—the railroads now on the defensive and highway traffic the aggressor.

Chairman Walker apparently does not believe that it is in the best interest of the public that these Titans of transportation should be permitted to battle to the death—until either the railroads are eliminated or the busses beaten back to local business by regulatory restriction. He believes that there are features of all competitive modes of transportation that may be worth saving. Some things the railroads do better than the busses and in some respects the baby of all carriers—the airplane—is supreme. How can the best features of all be retained?

Chairman Walker answers:

"Out of the competitive situation among the railroads, motor vehicles, and airplanes, must eventually come some unity of transportation systems. Only in this manner can such parts of these several means of transportation as deserve to survive be saved.

"The railroads can do much to hold business through elimination of duplication of services, through electrification and through greater speed, which for principal transportation service for passengers must eventually approximate something like present airplane time.

"Only through coördination with motor vehicles and airplanes, and possibly also pipe lines, can there be a satisfactory solution of the transportation problem. The transportation system of the future must be a combination of the motor vehicle, railroad, and airplane service."

Some railroad companies seem to share to some extent Mr. Walker's views. The Pennsylvania Railroad, for instance, has gone into the field of bus and airplane operation very extensively.

This may be the real way out of their present difficulties for the rail carriers.

—M. M.

COÖRDINATION OF NATION'S TRANSPORTATION SYSTEMS. By Paul A. Walker. *The United States Daily.* September 3, 1931.

Publications Received

HOW CHICAGO IS ATTEMPTING TO SOLVE ITS TRACTION PROBLEM. By Henry P. Bruner. Reprinted from *Harvard Business Review;* July, 1931.

THE ELECTRIC LIGHT AND POWER INDUSTRY BASIC STATISTICAL DATA. Reference statistical bulletin. National Electric Light Association; New York. August, 1931.

Annual, monthly, and weekly statistics for the electric light and power industry, embracing the operations of enterprises devoted exclusively to the generation and distribution of electricity, plus the electric departments of all others which maintained electric light and power systems jointly with other public utility services. These data were determined from reports received at N. E. L. A. headquarters from some 400 companies, whose operations represented approximately 92 per cent of the entire industry and, together with the published returns of municipal systems and of others filed with various public service commissions, were prorated to cover 100 per cent of the total electric light and power business.

Other Articles Worth Reading

CHANUTE—ITS UTILITIES—ITS TAXES. By H. J. Gonden. *Public Service Management;* September, 1931.

A consideration of the "facts of record," submitted in refutation of the widely spread belief that municipal ownership has made the now famous town of Chanute, Kansas, "tax free."

COÖRDINATION OF NATION'S TRANSPORTATION SYSTEMS. By Paul A. Walker. *The United States Daily;* September 3, 1931.

Solution for present competitive situation between railroads, busses, and airplanes discussed by an Oklahoma commissioner.

GOVERNMENT IN BUSINESS IS DISASTROUS BUSINESS. By John Spargo. *Electric Railway Journal;* September 1, 1931.

MERCHANDISING IS THE BUSINESS OF MERCHANTS. Department store executive, chairman of Electrical Merchandising Joint Committee, sees the end of utility merchandising when merchants are capable of assuming the job, which he believes will be soon. *Electrical World;* August 8, 1931.

PRESS RELATIONS IN CITY MANAGEMENT. By Carroll H. Wooddy. *Public Management;* August, 1931.

PUBLIC UTILITIES ADVERTISING AND BUSINESS RECOVERY. By Paul T. Cherington. *Gas Age-Record;* August 15, 1931.

TELEPHONE WIRES AND TREE TRIMMING. By Harry C. Hyatt. *Telephony;* August 22, 1931.

THE LOS ANGELES BUREAU OF POWER AND LIGHT: DEVELOPMENT OF MARKET AREA. By Martin G. Glaeser. *The Journal of Land & Public Utility Economics;* August, 1931.

An historical review and analysis by an able economist of the development and present status of one of the most unique institutions in the United States—unique because it is both a regulating and managing agency.

THE SHANNON AND POLITICS. Editorial. *Electrical World;* August 1, 1931.

An editorial descriptive of the hydroelectric power question in the Irish Free State.

SAMUEL II. Concerning Samuel Insull, Jr., heir apparent, who does well the homework his father assigns; is todays most carefully trained successor to an industrial throne. *Fortune;* September, 1931.

UTILITY PROFIT. By Thomas F. Woodlock. *The Wall Street Journal;* July 21, 1931.

WHY DOMESTIC CUSTOMERS USE 4,000 KW. HR. PER YEAR IN WINNIPEG. *Electrical World;* August 29, 1931.

The March of Events

Holding Companies Respond to Commission Questionnaires

THE Federal Power Commission, according to the *United States Daily*, feels that the holding companies interested in the production of electric power have been remarkably responsive to the rather comprehensive inquiry sent out by the commission. Approximately 25 per cent of the companies have thus far answered the questionnaire in whole or in part. Some of the larger holding companies have found it difficult to compile all of the information asked for within the short period allowed, and have requested brief extensions of time for filing parts of the returns. Chairman George Otis Smith of the commission has stated:

"One sentence quoted from the letter of transmittal from a large holding company fairly represents the spirit with which every company is responding to Questionnaire No. 2 of the Federal Power Commission. 'We believe we have been able to prepare a complete and responsive answer to your questions, but if the commission should find upon examination of the returns that it will be helpful to have additional information we shall be glad to provide it in so far as it may be available.'"

Telephones on Trains

THE London and North Eastern Railway has been conducting a series of experiments which it is hoped will enable passengers on long-distance trains traveling at high speed to talk with any telephone subscriber in the country. No actual service has been inaugurated. The company's engineers are attacking the problem of the busy business man, who on such a run as London to Edinburgh, about 395 miles, is virtually isolated from his office for hours at a time.

A further use to which they plan to put the telephone is for communication between the engineer and the conductor from various parts of the train. It is thought that this would be particularly useful on long runs, and that it may work out in time to be a considerable safety measure.

Alabama

Larger Discount for Prompt Payment is Fixed

THE city council of Athens, which operates a municipal light plant, according to the Decatur *Daily*, has effected a reduction in electric rates by giving a 25 per cent discount to all customers paying their bills by the 10th of the month, instead of 10 per cent.

The city, during the past year or so, has bought wholesale electricity from the Alabama Power Company and retailed it to Athens consumers. This, it is said, had been thought to be more economical than producing its own current. The *Daily* states that its rates are as cheap as any in the state and that the city gets free electricity for street and white-way lights besides making a profit.

California

Organization to Collect Phone Refunds Must Be Licensed

THE attorney general has ruled that an organization which makes agreements with telephone users to obtain for the latter refunds of any moneys unlawfully collected from them by a telephone company is a collection agency under the California statute, and is violating the law in operating without a license, we are informed by the *United States Daily*.

This question arose when the Telephone Users Protective Company offered a contract with subscribers which contained the statement that it was their intention, either through civil action, arbitration, or compromise, immediately to proceed with the view of collecting for the account of these

users and subscribers all illegal and unlawful overcharges inflicted upon them by the telephone companies during the past several years. It was said to be a fact that the purpose of the agreement was not confined to the collection of the claims, but also was concerned with the making of an investigation of a commission order and the books of the telephone company for the purpose of protecting the rights of the users under the public utility law. However, the attorney general was of the opinion that the principal object to be attained was the collection of the claims.

Connecticut

Utility Appeals from Electric Rate Order

THE Clinton Electric Light & Power Company has appealed from the order of the public utilities commission fixing lower electric rates in Madison and Clinton. The company alleges that the rates are confiscatory. The *United States Daily* states:

"This was the first order of the commission in the twenty years of its existence in which a valuation of an electric utility property was made and the commission ordered lower rates, all other similar cases involving electric rates having been settled by agreement.

"The order was to have been effective as of September 1st. With the filing of the appeal, the office of the attorney general announced that a petition would be filed on behalf of the commission asking the superior court not to stay the effective date pending determination of the company's petition to set the order aside. . . .

"The residents of the two towns involved in the case are represented by Professor Richard Joyce Smith, of Yale, who had been nominated by Governor Cross as a member of the public utilities commission but whose nomination was rejected by the general assembly."

District of Columbia

High Pressure Gas Is Under Investigation

THE public utilities commission last month held hearings on the question of gas pressure in Washington. Many complaints have been filed with the commission because the higher pressure was said to increase bills of consumers. The company had contended that the pressure should be between 8 and 10 inches.

Last winter the Washington Gas Light Company launched a campaign to encourage the installation of house-heating equipment, which necessitated maintenance of pressure higher than the legal limit to care for the increased consumption. It was testified at the hearing that utility engineers had criticized the transmission system, and that there had been warnings that high pressures were being maintained in various sections of the city which resulted in bad conditions. George A. G. Wood, president of the gas company, contended that unless the higher pressure is permitted the utility will be forced to expend approximately $500,000 for improvements of its distribution system over a 5-year period, which would ultimately be borne by the consumers.

Florida

Utilities Avert Higher Rate by Consolidation

THE Florida legislature this year imposed a gross receipts tax of 1½ per cent on electrical energy. The operation and effect of this law, according to Peter O. Knight, president of the Tampa Electric Company, would be to impose the tax on electricity sold by companies to subsidiaries and another tax on the same electric energy when sold to customers.

To forestall this result, we are informed by the Tampa *Tribune*, the Plant City Public Service Company has been conveyed to the Tampa Electric Company, which formerly owned the utility, and property of the Polk County Public Service Company and the Dade City Utilities Company have been similarly conveyed to the Tampa Electric. This will avoid the sale of current by the

Tampa Electric to the subsidiaries. The Tampa Electric will, itself, be distributing current directly in the territories formerly served by the subsidiary companies. Mr. Knight says in regard to another feature of the new tax laws:

"Another law that was passed was a tax on intangibles. By reason of this law the Tampa Electric Company, which was the owner of all the stock of these subsidiaries, would have been compelled to pay a tax on the stock held by it in these subsidiary companies, in addition to the subsidiary companies paying the ad valorem taxes on all their real and personal property.

"In addition to all the above, an annual corporation tax is imposed upon all corporations.

"Had the Plant City Public Service Company, the Polk County Public Service Company, and the Dade City Utilities Company continued their business in their names as heretofore, these taxes would have necessitated an increase of rates; and in order that the rates to the customers of these subsidiary companies should not be increased, their properties and business have been taken over by the Tampa Electric Company, which, of course, has always been the owner of them.

"There will be no change in our methods of doing business or in our personnel. Everything in these respective communities will go along just as it has heretofore, except that the business will be done under the name of the Tampa Electric Company instead of that of the subsidiary companies."

Georgia

Experts Go to Bat in Gas Valuation Case

THE public service commission about two months ago postponed action on applications for increased rates for gas in Northern Georgia cities in order to permit the city of Atlanta to make an appraisal of the properties of the Atlanta Gas Light Company. Dr. John J. Bauer, acting for the city, at the resumption of hearings on September 10th, submitted a valuation of $6,660,731. This compared with a valuation of $10,940,819 claimed by the company and a valuation of $10,261,819 reported by Dr. H. E. Riggs, employed by the public service commission.

The valuation of Dr. Bauer was immediately attacked by Robert C. Alston, attorney for the gas company. He branded the appraisal as "imaginary and theoretical," and declared that Dr. Bauer did not go near the gas company's plant in making the appraisal, and made no inspection of the properties himself or through any representative. To this Dr. Bauer replied that he was already familiar with the gas company's properties in Atlanta and had made a previous survey of his valuation, so he based his report on the previous information after consultation with Frank Bat, a gas engineer, who joined him in signing the report.

Mr. Alston argued that Dr. Bauer had admitted in previous testimony before the commission that he never built or operated a gas plant, and that he was "an economist" instead of a gas expert. In cross-examination Dr. Bauer referred all technical gas questions to Mr. Bat. The commission finally agreed that Mr. Bat and Dr. Bauer should be placed on the stand jointly.

There was criticism in Dr. Bauer's report of the large expenditures to bring natural gas into the cities involved in the rate proceedings. Large and long transmission lines which had been built, it was said, had dubious economic value with regard to present or immediate prospective requirements of gas consumption in the Atlanta territory. It was declared that the whole project of conversion to natural gas was conceived with excessive expectation.

Arguments developed over the question of valuing mains. It appears that Dr. Bauer undertook to value a plant constructed of steel mains, while the present plant is constructed of cast iron pipe. He stated that he did not know of any court decisions forcing an appraiser to use "antiquated material in establishing replacements costs." Representatives of the company, on the other hand, declared that if the company should be required to replace its plant, it would use cast iron pipe because such pipe had been known to last two hundred or three hundred years, while steel pipe is short lived and develops leaks more readily. A witness stated that leaks could be repaired in cast iron pipe but steel pipe must be replaced.

A difference of opinion developed over the inclusion of a standby plant for generating artificial gas. It was brought out that city officials had criticized the dismantling of part of the gas generating plant while, on the other hand, Dr. Bauer had omitted any standby plant because he did not consider the artificial plant useful in the natural gas system of distribution. He pointed out that it would be impractical to distribute natural gas through artificial gas equipment without adjustments, and that in any event any breakdown resulting in natural gas equipment would be repaired before these adjustments could be made.

Professor Riggs explained the detailed familiarity he had with the local plant dating

back to many years. He said that since that time he had made repeated personal inspections of the various parts of the plant, had kept in touch with its progress and expansion, and his figures showed exactly the proper value for rate-making purposes. Professor Riggs, according to the Atlanta *Journal*, expressed the opinion that the wide variance in valuation resulted from Dr. Bauer and Mr. Bat ignoring the existing gas plant and estimating the cost of replacing it at the present time.

Illinois

Chicago Elevated Fare Appeal Is Pressed

CORPORATION Counsel William H. Sexton, of Chicago, has mailed to the clerk of the United States Supreme Court the city's brief in its plea for dissolution of an injunction obtained by the Chicago Rapid Transit Company restraining the state commission from interfering with the collection of a 10-cent fare on Chicago's elevated lines. The city is seeking restoration of three-for-a-quarter fares.

The litigation started in 1928 when the company was denied permission by the commission to increase its fares from three for 25 cents to 10 cents straight and to abolish the weekly passes which formerly sold for $1.25. The company put the higher fares into effect under the protection of a temporary injunction obtained from a Federal court. After several hearings the injunction was made permanent in July, 1930.

The elevated lines contend that the old rates were confiscatory and that their continuance under compulsion by the state amounted to confiscation of property without due process of law in violation of the Federal Constitution.

The city contends that there is no constitutional question involved, that the elevated lines are operating under old franchises fixing their rate of fare at 5 cents, and that any rate of fare in excess of that sum fixed by the commission is not confiscatory and is binding upon the elevated lines.

It is further argued that the elevated lines did not prosecute an appeal from the commission's ruling in the state courts as provided by the law organizing the rate body, and, therefore, the Federal proceeding should be dismissed because the company had not exhausted all of its remedies under the state law.

A valuation of $125,000,000 claimed by the company is alleged by the city to be excessive. Although the value of the elevated lines under the traction consolidation ordinance is fixed at not more than $95,000,000, it is said to be impossible to bring that fact to the attention of the Supreme Court because the lower value was fixed after the case was in the lower Federal court and was not incorporated in the record there.

Lower Gas Rates Are Filed

A NEW schedule of rates for gas has been filed with the commission by the Public Service Company of Northern Illinois. These schedules contain reductions made possible by bringing natural gas into the northern Illinois area.

The new rates, if approved, will bring about a reduction in the cost of gas for residential heating and commercial space heating of approximately 20 per cent. Gas for cooking and domestic purposes will be reduced approximately 2 per cent. The total saving to gas users will amount to more than $300,000 over a period of twelve months.

The company is ready to begin distribution of the new gas, which will, in the greater part of the territory served, be a mixture of natural gas and artificial gas, and will have a heating value of approximately 800 B.T.U.

The commission on September 15th opened hearings on lower rates proposed by the Peoples Gas Light & Coke Company of Chicago for mixed, natural, and artificial gas. Reductions by this company under the proposed schedules amount to 3½ per cent for gas used for domestic purposes.

Indiana

Subscribers Protest Higher Rate in Federal Court

TELEPHONE users representing many of the southern Indiana towns served by the Southern Indiana Telephone and Telegraph Company, according to the Indianapolis *News*, appeared in Federal court on September 21st before Samuel Dowden, special master in chancery, protesting against rate increase proposals and conditions of service, as hearings

in the long-drawn-out rate injunction suit were resumed.

A committee from the Madison Chamber of Commerce appeared to voice the protest of Jefferson county residents. Dubois county telephone patrons forwarded by special representatives a petition said to have been signed by approximately 65 per cent of the utility's customers, saying that they would have their phones removed rather than pay higher rates. The *News* adds:

"George M. Hufsmith, deputy attorney general representing the public service commission in opposing the telephone company's appeal to Federal court, proposed to complete his attack against the equity suit brought by the company to enjoin the commission from interfering with the introduction of higher rates. At hearings in July, Hufsmith developed evidence concerning money spent by the telephone company for 'public relations' in an alleged attempt to influence the commission in the writing of a rate order. His contention has been that records of the company and testimony have indicated that it is appearing in equity court with 'unclean hands' and, therefore, is entitled to no relief from the commission order which denied rate increases more than a year ago.

"Evidence was introduced by the attorney for Dubois county patrons, tending to show that each time over a period of years since 1925 that rates had been increased, the number of telephone users has dropped off and revenues have declined. The same was true in the experience of telephone exchanges at Worthington, according to exhibits introduced by the attorney. Mr. Jones introduced further testimony purporting to show that certain rate case and appraisal expenses had been charged to operating costs in spite of the fact that some of the charges had not been authorized by the public service commission.

"Through the testimony of James Wallace, superintendent of the municipal light plant at Jasper, Jones introduced evidence to the effect that many of the poles in Jasper bearing the inventory numbers of the Southern Indiana Telephone and Telegraph Company, were, in reality, the property of the city. Numbers of the poles, the witness said, were owned jointly by the city and the telephone company, but still carried the company's inventory numbers. Wallace admitted that he did not know whether or not those poles had been included in the present rate case inventory and appraisal."

City Prefers Cubic Foot to Therm Basis of Charging

THE Public Service Company of Indiana recently adopted schedules under which consumption would be charged for on the therm basis rather than the cubic foot, but customers were given the option of retaining the cubic foot basis if they filed notice with the company to that effect. The Newcastle city council has requested the utility to render its gas bills to the city on the basis of one thousand cubic feet and has advised residents of the city to file similar requests with the utility.

The Newcastle *Courier Times* has printed a blank for customers to sign if they wish to exercise this option, and this newspaper offers to file the request with the utility. In making this offer the paper says:

"The filing of this blank will have no effect on your present gas bill, the company says, but unless it is filed when natural gas is brought in it will cost you the equivalent of $2.40 per thousand feet instead of the $1.40 per thousand feet you are now paying for artificial gas.

"If you are not sufficiently interested in your gas rate to fill out this blank and send it to the *Courier-Times* office, then don't complain if the company should charge you at the rate of $2.40 per thousand feet for natural gas. In other words, do not be helpless and wait for somebody else to attend to your gas rate, but promptly sign the blank below and send it to this office. The city council advises everybody to do it so that it may know the sentiment of the people of Newcastle. If you do not sign up, it will be taken for granted that you do not care what rate you pay for natural gas."

Kentucky

Lower Prices said to Justify Lower Gas Rates

THE lower values and prices which have gone into effect in the last two years are cited by counsel for the city of Lexington as a basis for holding that the 45-cent rate fixed by the commission is not confiscatory. A brief in behalf of the city was recently filed with the three Federal judges in the litigation involving rates of the Central Kentucky Natural Gas Company. Nearly $750,000 in impounded money awaits settlement of the case.

The brief contains the assertion that the judges may consider price trends since the proof was taken. It quotes a statement by the Supreme Court that "a rate order which is confiscatory when made may seem to be

confiscatory, or one which is valid when made may become confiscatory at a later period." The brief states in part:

"And while it is perhaps unfair to argue that we may take judicial knowledge of the future, it is to be borne in mind that judicial decision, like all other operations of the human intelligence, must be done in the light of the common experiences of mankind. We may be pardoned, therefore, if we suggest to the court how past experiences and current conditions alike must persuade us that the ensuing three years will astonish us all if they bring a return of the pre-October, 1929, days.

"The high current prices as manifest in the engineering set-ups in evidence here were the natural result of the free-play of the gambling mania of the times, the pushing of enterprise beyond anything that was normal or healthful, cars for everybody, steel for their construction, unprecedented activity in the building trades, labor asking and taking its own highest prices. Naturally these prices are not to work their rate result for the eight years probably to be covered by the decision."

Massachusetts

Operators Ask Authority under New Bus Law

MORE than three thousand applications for licenses to operate busses have already been received by the division of railroad, railway, and busses, of the public utilities commission, according to an announcement by Director Henry W. Seward, reported in the *United States Daily*. This was necessary under the provisions of a new law requiring owners of busses to obtain a permit for each vehicle and to obtain a license to operate from the commission.

The permit fee established by the commission is $10, while the operator's license is $1. The licenses will expire December 31, 1932, and will be renewed annually for a like sum. The permit, which is not transferable, will remain with the vehicle as long as it is properly maintained, but may be suspended or revoked at any time when it appears to the department that the motor vehicle covered by such permit does not conform to rules and regulations.

Michigan

Commission Is Dissatisfied with Ways of Experts

THE public utilities commission on September 15th discharged the three experts engaged in making the audit and appraisal of the property of the Michigan Bell Telephone Company for presentation in Federal court. The Grand Rapids *Press* states:

"While no formal statement was made by the commissioners, it was learned they not only were dissatisfied with the way the case has been progressing but strongly objected to the terms of the agreements entered into by the old commission and the experts which allowed them to work on a per diem basis."

The newspapers state that these experts were invited to submit a new proposition covering compensation for services and expenses of the experts and their staffs. They were hired as experts last January before Governor Wilber M. Brucker changed the personnel of the commission. Their duties were to bring the state's appraisal of the phone company up to date and coördinate the state's statistics with recent decisions of the Federal supreme court in relation to the rates of public utilities. One of the experts was paid $100 a day, another $75, a third $50.

Missouri

Reopening of Holding Company Regulation Case Is Asked

THE public service commission on September 16th heard arguments on the motion of the Cities Service Gas Company for a rehearing on the commission's order requiring the company to file schedules for gas sold by it to industrial consumers.

The company objected to filing such schedules on the ground that it has not engaged

in intrastate business in Missouri, and, therefore, is not subject to jurisdiction of the commission. Counsel for the company said that it was not fear of the Missouri commission that caused the pipe line company to resist the order, but such regulation in Missouri means the company must yield to regulation by commissions in Kansas, Oklahoma, Texas, Nebraska, and any other states in which it operates.

New York

Commission Refuses to Hear Reds on Electric Rates

EFFORTS of communist organizations to inject themselves into the electric light rate controversy, according to the New York *Times*, were frustrated by Chairman Milo R. Maltbie, of the commission, who refused to hear their spokesman at an adjourned public hearing on the application of the Washington Heights Taxpayers' Association for a revision of rates of the New York Edison Company and the United Electric Light and Power Company. The *Times* says:

"Half a dozen representatives of communist groups appeared at the hearing, but only two individuals sought permission to make statements for the record. Policemen had been stationed outside the state office building and in the corridor outside the commission's hearing room, but there was no sign of disorder and their services were not found necessary.

"The Washington Heights group was unprepared to present evidence to support its complaint and will have until next Friday to prepare its case for hearing. Mr. Maltbie indicated his intention to dismiss the complaint if the civic group was not prepared to go on at that time. On September 11th Howard S. Guttman, counsel for the civic association, obtained a week's adjournment when he admitted he was not ready to present evidence to back his contention that the rates complained of should be revised downward.

"Stewart Browne, president of the United Real Estate Owners' Association, who sought a hearing, was informed by Mr. Maltbie that he was not a party to the proceedings and must file a formal complaint before he could have any standing before the commission. Mr. Maltbie declared the commission would give due consideration to letters received from Mr. Browne, from the communist organizations, and from other groups.

"A communist representative, who said he had with him petitions signed by 5,000 workers protesting against the $1 a month minimum charge for residential consumption of electricity, was informed by Mr. Maltbie that the commission would accept these documents. The communist spokesman, however, took the petitions with him when he left the hearing room."

Commission Will Investigate Natural Gas Industry

AN investigation of all phases of the natural gas industry has been ordered by the public service commission. This inquiry will cover rates, rules, regulations, and practices relative to production, transportation, sale, and utilization of natural gas.

The commission has said that development and increased production in the natural gas fields of the state and in contiguous territory, and the present situation relative to transportation, sale, and utilization of natural gas are such that an investigation should be made. This action, it is said, has also been brought about by the present situation relative to drilling, leases, intercompany agreements, rates, and other factors.

Governor Appoints Commission to Study Interstate Power

GOVERNOR Roosevelt has announced the appointment of two members of a commission created by the 1931 legislature to survey interstate electric business. His announcement follows:

"Pursuant to the provisions of Chap. 673 of the Laws of 1931, Governor Roosevelt today appointed Honorable Meyer Jacobstein, of Rochester, and Karl R. Miner, of Yonkers, as members of the commission to make a general survey of utility companies of states adjoining the state of New York engaged in interstate transmission of power and to negotiate and agree upon the terms of a treaty or compact between the states and the government of the United States, for submission to the legislature of such states and to the Federal government for approval, such treaty or compact to cover comprehensively all matters relating to the effective regulation and control of interstate transmission of power between such states."

These appointees will serve in conjunction with two senators appointed by the temporary president of the senate and two members of the assembly appointed by the speaker.

Ohio

City Threatens to Cancel Franchise to Force Low Rates

A RESOLUTION to annul the franchise of the East Ohio Gas Company, under a six months' cancellation clause contained in the grant, has been introduced in the Akron city council. This is said to be the council's answer to the refusal by utility officials to give Akron users a preferential rate because of proximity to the Portage Lakes gas fields.

The East Ohio, it is reported, pays 18 cents at the well for gas from the Portage Lakes field, and pays 41.8 cents for gas at the Ohio river from the Hope Gas Company. The difference is said to represent the cost of piping, purifying, distribution, depreciation on property, and other items which enter into the gas business. A representative of the company has stated that the Ohio fields, while producing abundantly for a time, are quickly drained and for this reason it has been found necessary to make the West Virginia fields the potential production point for all gas piped into the territory. To grant one city a preferential rate, he said, would be manifestly unfair to all the other cities served by the company.

Akron officials are watching a commission investigation into the rates in Cleveland. The commission is passing upon distribution rates but is also investigating production and wholesale costs. The purpose of the cancellation threat is to put Akron in a position to avail itself of whatever benefits may become available when the new Cleveland rate is fixed.

Some of the councilmen, however, are reported to be unwilling to move with haste toward cancellation. Robert M. Sanderson, chairman of the council's utilities committee, is reported as saying that he would support enforcement of the cancellation clause if it is the safe and sound move for the city to make. He also said that any effort to put across a municipal ownership proposition with relation to gas probably would be defeated because the public is not convinced that sueh operation of utilities is the cheapest means of obtaining whatever commodity is offered for sale. He declared that he was not satisfied himself that municipal ownership is the solution.

Oklahoma

Federal Injunction Is Sought in Ouster Suit

THE Lone Star Gas Company of Texas and its various subsidiaries are reported in the *United States Daily* to be involved in three separate actions in Oklahoma involving injunctions and rate investigations. The *Daily* states:

"Attorneys for the company have filed in the United States District Court for the Eastern District of Oklahoma an application for a temporary injunction to prevent interference with any property of the company. The suit is directed against Leon Hirsh, special counsel for Governor Murray in several gas utility ouster cases; Earl Pruet, county attorney of Jefferson county; and John W. Hoffman, of Oklahoma City, temporary receiver for the Lone Star at Waurika, where the governor's ouster suit was filed recently.

"Judge R. L. Williams in the Federal court did not at once act on the petition for an injunction.

"At Waurika, where the ouster and receivership suit is pending against the Lone Star in state courts, Judge Eugene Rice has refused a transfer of the suit from state to Federal courts, holding the action is 'not transferable.'

"The corporation commission is now conducting a hearing in the form of an investigation into rates charged by the Lone Star in twenty-six Oklahoma cities and towns and as to property valuations, dividend payments, and reasonableness of rates.

"It was brought out at the hearing that the Lone Star has taken from this state nearly 140,000,000,000 cubic feet of natural gas for use elsewhere and has used only about 5,000,000,000 cubic feet for distribution within the state.

"Paul Reed, auditor for the commission, testified the gate rate should be about 29.5 cents per thousand cubic feet, instead of the 40-cent rate charged by the Lone Star. The company claimed the rates now charged are reasonable, as the company serves only 8,000 customers in widely scattered cities and towns, and that the rate in all except four towns was granted by franchise.

South Carolina

Assembly Calls Halt on Investigation Expenses

THE general assembly, under the terms of a resolution introduced in the house last month, sets forth that it believes that the sum of $50,000 appropriated at the regular session in 1931 for an investigation of power rates was "amply sufficient to pay the justifiable expenses of an investigation of power rates and power company properties," according to the Columbia *Star*.

It is said that the intention of the general assembly was that the investigation report be made promptly so as to extend quick relief to the consumers of electric power in the state. The house recommends a "most careful husbandry and expenditure of the sum appropriated, well realizing that this expenditure constitutes a material increase in the appropriation bill for 1931 and which the economic condition of the state might prevent in 1932." The *Star* continues:

"The power rate investigating committee is advised to 'so manage its investigation that it may be able to make a report to the general assembly at the next regular session, and to enter into no plan, contract, or purpose of extending its activities so as to require further appropriations.'

"Dr. John Bauer, economist, employed in an advisory capacity by the rate investigation committee, had said that one more year of time, with a personnel four or five times the size of the one now employed, would be required to complete the investigation.

"The house, by its resolution yesterday, urges the committee to complete its work by next year and not to contract to extend its activities so as to require additional appropriations."

Utah

Commission Investigates Berth Fare Increase

THE commission has started an investigation of the application of the Pullman Company for an increase in fares for two persons occupying one berth. The company states that the additional fare for the second person should be 20 per cent of the fare for one person.

A study of the company's records of travel shows that more than 90 per cent of the berth accommodations are occupied by one passenger only, and less than 10 per cent by two passengers. The charge, therefore, affects only a small portion of sleeping car travel. The small differential, it is asserted, is more than justified in value to passengers for the service furnished. The company in its application adds:

"The second passenger obtains sleeping accommodations; has all the facilities of the car at his disposal, a seat in the daytime and access observation, club, and lounge cars. He pays the same rail fare as the first passenger.

"Sleeping car service is similar to that of a hotel and it is common knowledge that hotels charge more for a room occupied by two persons than the same room occupied by one."

West Virginia

Wholesale Gas Costs Are Studied in Rate Case

APPRAISAL of the properties of the Manufacturers Light & Heat Company and the Ohio Fuel Gas Company, sister subsidiaries of the Columbia Gas & Electric Company, along with an appraisal of the Natural Gas Company of West Virginia has been considered necessary by representatives of the city of Wheeling in the city's case against rates of the Natural Gas Company. City authorities are also interested in the question of the charges made by the related companies for gas supplied to the Natural Gas Company of West Virginia. The Wheeling *News* states:

"The Natural Gas Company reports that about 25 per cent of its required natural gas was purchased in 1930 from the two sister companies. And while it is selling gas to Greater Wheeling consumers for a discount price of 50 cents a thousand cubic feet it reports paying the Manufacturers Company 50 cents for the same gas. The Ohio Fuel Gas is reported receiving 45 cents from the local company for the same amount of gas."

The Latest Utility Rulings

Motion of Private Citizen to Join Utility Ouster Fight Is Denied

THE court battles between Professor Albert Levitt and the Connecticut Public Utilities Commission reached another stage in the superior court of Hartford county when Professor Levitt made a motion to join, as party plaintiff, the case brought by the attorney general to oust members of the commission for alleged delinquency in failing to order the removal of certain railroad crossings as required by statute.

This round was won by the Connecticut commission when Judge Ernest A. Inglis denied Professor Levitt's motion. Nearly two years ago Professor Levitt circulated the petition asking the attorney general of the state to file a complaint against the public utilities commission because of their alleged failure in acquitting themselves of fulfilling their statutory duties in the construction of grade crossings. Under the Connecticut law, as announced by the court, the effect of this petition was to impose the mandatory duty upon the attorney general to bring the ouster proceedings. The proceedings were accordingly instigated, and last May the commissioners were found not guilty of neglect of duty and the complaint was ordered dismissed.

The attorney general refused to appeal from this decision and Professor Levitt, who appeared as *amicus curiæ*, thereupon filed a motion that he be permitted to become a party plaintiff in order that he might take an appeal. Denying this motion, Judge Inglis pointed out that Professor Levitt's personal interest was in no way affected by the litigation, and such interest as he had in the subject matter was no different from that of any other member of the public, or of any other of the electors to sign the petition calling the attorney general into action. The court stated:

> "The statute imposes on the attorney general the duty of prosecuting the complaint. If he does not perform that duty he is subject to the same penalties that follow any breach of duty on his part. In other words, this statute gave to any 100 electors the right to call the attorney general into action. It certainly did not give them the right to determine just how he should conduct the case. That matter is left by the statute to the attorney general's sound discretion. The statute gave to the 100 electors the right to insist that an action be started, but it certainly did not vest in them any interest in the result of the action which was any different either in kind or degree than the interest therein of any other member of the public." *Burrows v. Higgins, No. 40929.*

Authority to Supply Gas to Commercial and Industrial Consumers Is Denied

THE Manufacturers Natural Gas Association, Inc., this year asked authority from the Indiana commission to supply natural gas for commercial, industrial, and manufacturing purposes in the city of Indianapolis, where the Citizens Gas Company conducts a general gas business. Opposition developed on the part of the gas company and the city of Indianapolis, which is preparing to take over the plant. The contention was made that there was not enough business for an additional company and great stress was laid upon the point that the commission could not authorize limited service to particular

classes of customers, such as industries and manufacturers alone.

The commission has dismissed the application for authority on the ground that it is without jurisdiction or authority to issue such a certificate. *Re Manufacturers Natural Gas Association, Inc.* (*Ind.*) No. *10548.*

Increased Rates and Holding Company Management Are Condemned

THE Ohio commission, in disapproving a proposed increased rate by the Warren Telephone Company which was suspended in June 1928, passed upon the right of a holding company to burden an operating company with excessive salaries of holding company officials, particularly nonresident officials. The commission found that under the increased rates the company would have netted a return of approximately 11.77 per cent, whereas under the old rate the company would have earned 7.21 per cent excluding rate case expenses.

The commission held that the rate of 7.21 per cent return was not unreasonable but that the 11.77 per cent return was excessive. It was pointed out that the application for increased rates had come shortly after the Warren Telephone Company came under the corporate control of a holding company. The commission stated:

> "The commission is of the opinion that there is a justification for holding company operations and management of properties, particularly where there is, for geographical reasons or otherwise, some economic basis for more efficient management, but the commission, likewise, is of the opinion that a part of that efficiency should be reflected in benefit to the consumer. That benefit would result either in a reduction in rates or in better service. Here, instead of reducing rates, the holding company immediately asked for an increase in rates. There is no evidence that any better service is rendered today than there has been for a number of years in the city of Warren." *Re Warren Telephone Co. (Ohio) Advanced Utility Rate Proceeding No. 303.*

Rate War Ends in Sale of Jamestown Plant to Municipality

THE city of Jamestown and the Niagara, Lockport and Ontario Power Company have received some publicity in the past because of their competitive rate reductions. The city reduced rates below the point where, according to the company, the cost of service was being met. Proceedings relating to this matter were brought before the commission and also found their way into the courts.

Pending a final decision by the commission on the merits, negotiations were begun towards the sale of the private plant to the city of Jamestown. The New York commission has now placed its stamp of approval upon the transfer.

The contract of sale provided for the price to be paid to the Niagara Company in instalments, with the title remaining in the Niagara Company until final payment had been made. The Niagara Company was to have the right to repossess the property in case of default by the city. The city was to pay for the plant out of surplus earnings from time to time. There was also a provision that the city should contract to take current from the Niagara Company for a period of five years.

Approval was asked upon the ground that two electric systems in a municipality are uneconomical and produce a duplication of investment and of expenses, that the policy of the state of New York is opposed to duplication of plant and service, and that the litigation existing and threatening between the parties would undoubtedly be long and expensive and should be avoided in

the public interest. The commission was of the opinion that the transfer would be in the public interest and should be authorized. *Re Niagara, Lockport & Ontario Power Company et al. (N. Y.) Case No. 6912.*

Mutual Telephone Companies Furnishing Poor Service Must Give Way to Other Companies

SEVERAL persons who were dissatisfied with the service of the Prentice Telephone Company, a mutual organization, instigated a movement which resulted in a certificate being granted to the Ogema Telephone Company to build a line for serving them. These patrons complained that the Prentice Company had a grounded system while the Ogema Company had full metallic circuit. Furthermore, these people conducted their business in Ogema rather than Prentice, and their church and social relations centered in Ogema.

The commission said that to grant the petition would mean that the Prentice Company would have to maintain a line eight miles in length to serve five subscribers, with little possibility of acquiring more subscribers on the same line. On the other hand, it appeared neither logical nor equitable to deprive potential subscribers of service to the places where their interests centered.

It appeared to the commission to be the logical solution of the question for the Ogema Company to purchase the line, and the commission ruled that if negotiations for the Ogema Company to take over the line were unsuccessful, a certificate should issue to that company to extend its service. *Re Ogema Telephone Co. U-4108.*

Appeals from Commission Decisions Must Include all Necessary Parties

BACK in June, 1926, the state highway commissioner of Connecticut filed a petition with the commissioners of that state asking for an order requiring the elimination of a dangerous grade crossing of a highway with railroad tracks in the town of Andover. In March, 1930, the commission handed down an order disposing of the petition in a way which was not satisfactory to the town of Andover.

The town appealed, naming as the defendants the public utilities commission and the state highway commissioner but failing to name the railroad companies involved. Because of this omission, the commission demurred to the town's appeal. Judge Avery, in giving the opinion of the supreme court of errors sustaining the commission's demurrer, held that the railroad company was a necessary party having an "adverse interest" to the town's appeal. The opinion stated that the complaint on appeal from a decision of the public utilities commission is demurrable for failure to include all necessary parties. *Re Andover (Conn.) 155 Atl. 717.*

Person Supplying Tenants with Water Is Not a Public Utility

A WATER utility asked a New Jersey court to restrain a man from supplying water to certain dwellings owned by him. It appears that the owner of these houses became dissatisfied with the service of the water utility, and laid mains to connect his houses with an artesian well on one of

his properties. He then started to furnish his tenants with water. The pipes were mostly laid upon his own land but some were laid in the public streets by permission of the borough. No separate charge was made to tenants for water service, and no increase in rent was made.

The water utility asserted that the owner of these properties had no legal right to maintain pipes and conduits on his own property or in the public streets of the borough for the purpose of supplying water, and that he was operating as a public utility without approval or consent of the commission.

The court was of the opinion that he was within his rights in laying the mains and conduits on his own land and supplying his houses with water from an artesian well also owned by him. With respect to his right to lay and maintain pipes and conduits in the public streets, it was said to be elementary that such rights should be tested at law.

The court did not agree that he was operating as a public utility within the meaning of the Public Utility Act, because he supplied water exclusively to houses and property owned by him. It was remarked that the board of public utility commissioners had already gone further and said that one supplying water to his own dwelling and to the dwellings of a few neighbors is not thereby constituted a public utility, even though he charges for such service.

The court took a shot at the theory advanced by some that public utility service is a prerogative of government which is merely delegated to individuals. Vice Chancellor Berry quoted from a decision that "the right, however, to sell water is not prerogative of government, but is a business in which any person may engage without legislative authority." He declared that it is only with respect to the special use of the streets for pipes, mains, etc., that a grant from the state or its subdivisions is necessary.

It was further observed by the court that, assuming that the owner of these dwellings was a public utility and operating under municipal consent not approved by the board of public utility commissioners, complaint should be addressed to that board, as it has general supervision and regulation of all public utilities with complete power to enforce its orders and decrees. A restraining order was denied. *Junction Water Co. v. Riddle* (*N. J. Ct. of Ch.*).

Economics as Well as Laws Influence Rate Making

WHATEVER problems a commission may face in fixing the rates of public utilities generally, the difficulties in fixing rates for cotton ginning appear to be almost insurmountable. As was stated by the Oklahoma commission in a recent decision, there must be due allowance for a reasonable return upon the value of the property used and useful in the public service, but it is impossible for the commission to attempt to determine the value of each cotton gin within the state separately, in the establishment of a rate for the ginning of seed cotton as a public business.

Then, too, the rates for a particular year depend largely upon the amount of business. This involves an estimate based partly upon the conclusions reached by Federal department. Rates in other states are also considered.

The commission, however, solved these problems and established a schedule of rates, but Chairman Paul A. Walker filed a dissenting opinion in favor of lower rates, in which he expressed views which may be of value not only to cotton ginners but to utility operators in various fields. He said in part:

> "Whether we are inclined to recognize economics, as a matter of law, in rate making, we must admit that economics plays its part in the rate to be prescribed.